

6-17-91

Vol. 56

No. 116

federal register

Monday
June 17, 1991

United States
Government
Printing Office

SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, \$300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

THE JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
VOLUME 100
PART 1
1970

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Monday
June 17, 1991

Federal Register

Briefing on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

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- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240

NEW ORLEANS, LA

- WHEN:** July 23, at 9:00 am
- WHERE:** Federal Building, 501 Magazine St.
Conference Room 1120,
New Orleans, LA
- RESERVATIONS:** Federal Information Center
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-274-AD; Amdt. 39-7042; AD 91-13-11]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires the installation of protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall. This condition, if not corrected, could result in chafing of wires, which could arc and possibly burn through an adjacent oxygen line; this could create a fire hazard should the oxygen line be pressurized. This action adds additional airplanes to the applicability of the rule. This amendment is prompted by a report that several additional airplanes may be affected by the same unsafe condition that prompted the existing AD.

EFFECTIVE DATE: July 22, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Herron, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2672. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate,

1601 Lind Avenue SW., Renton, Washington 98055-4058.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 89-21-07, Amendment 39-6343 (54 FR 40635, October 3, 1989), applicable to certain Boeing Model 747 series airplanes, to require the installation of protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall, was published in the *Federal Register* on January 28, 1991 (56 FR 3052).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two comments were received. Both commenters supported the amendment.

One of the commenters noted that the amendment will affect two U.S.-registered airplanes. The preamble to the Notice indicated that no additional U.S.-registered airplanes would be affected. The FAA concurs and has revised the economic analysis paragraph, below, to reflect this.

The economic analysis paragraph has also been revised to increase the specified hourly rate from \$40 per manhour (as was cited in the preamble to the Notice) to \$55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

Paragraph C. of the final rule has been revised to specify current procedure for submitting requests for approval of alternative methods of compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 127 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 5 airplanes of U.S. registry, including the additional 2 airplanes addressed in this action, will be affected by this AD. It is estimated that approximately 6 manhours per airplane will be needed to accomplish

the required actions, and that the average labor cost will be \$55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,650; the total cost impact of this action, relative to the 2 U.S.-registered airplanes added to the applicability of the rule, is estimated to be \$660.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-6343 and by adding the following new airworthiness directive:

91-13-11. Boeing: Amendment 39-7042.

Docket No. 90-NM-274-AD. Supersedes AD 89-21-07.

Applicability: Model 747 series airplanes, listed in Boeing Service Bulletin 747-35-2059, Revision 2, dated March 22, 1990, certificated in any category.

Compliance: Required as indicated, unless previously accomplished.

To prevent chafing of wire bundles, subsequent arcing and burn-through of adjacent oxygen lines, and a resulting potential fire hazard, accomplish the following:

A. For airplanes listed in Boeing Service Bulletin 747-35-2059, dated August 17, 1989: Within 60 days after October 16, 1989 (the effective date of Amendment 39-6343, AD 89-21-07), install protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall in accordance with Boeing Service Bulletin 747-35-2059, dated August 11, 1989; Revision 1, dated November 22, 1989; or Revision 2, dated March 22, 1990.

B. For airplanes listed in Boeing Service Bulletin 747-35-2059, Revision 2, dated March 22, 1990, that are not subject to paragraph A. of this AD: Within 60 days after the effective date of this amendment, install protective sleeves on wire breakouts and oxygen lines in the upper deck left sidewall in accordance with Boeing Service Bulletin 747-35-2059, Revision 2, dated March 22, 1990.

C. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-6343, AD 89-21-07.

This amendment (39-7042, AD 91-13-11) becomes effective July 22, 1991.

Issued in Renton, Washington, on June 5, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 91-14302 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-32-AD; Amdt. 39-7039; AD 91-13-08]

Airworthiness Directives; Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which requires the removal of a towing instruction placard and the installation of a new placard. This amendment is prompted by a report of a nose gear-up landing due to landing gear actuating system damage that jammed the nose gear in the retracted position. This condition, if not corrected, could result in the inability to extend the nose landing gear for landing.

EFFECTIVE DATE: July 22, 1991.

ADDRESSES: The applicable service information may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to all Israel Aircraft Industries (IAI) Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which requires the removal of a towing instruction placard and the installation of a new placard, was published in the *Federal Register* on March 14, 1991 (56 FR 10840).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Paragraph B. of the final rule has been revised to specify the current procedure for submitting requests for approval of alternative methods of compliance.

The economic analysis paragraph, below, has been revised to increase the

specified hourly labor rate from \$40 per manhour (as was cited in the preamble to the Notice) to \$55 per manhour. The FAA has determined that it is necessary to increase this rate used in calculating the cost impact associated with AD activity to account for various inflationary costs in the airline industry.

After careful review of the available data, the FAA has determined that air safety and the public interest required the adoption of the rule as proposed with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator, nor increase the scope of the AD.

It is estimated that 316 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 manhour per airplane to accomplish the required actions, and that the average labor cost will be \$55 per manhour. The estimated cost for required placards is \$7 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$10,902.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this acting (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is continued in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

91-13-08. Israel Aircraft Industries (IAI):
Amendment 39-7039. Docket No. 91-NM-32-AD.

Applicability: Models 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, certificated in any category.

Compliance: Required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent the inability to extend the nose landing gear for landing, accomplish the following:

A. Remove the existing towing instruction placard and install a new placard in accordance with the applicable service bulletin, as follows:

Airplane models	Service bulletin
1121, 1121A, 1121B.	1121-11-015, dated November 26, 1990.
1123.....	1123-11-031, dated November 26, 1990.
1124 and 1124A.....	1124-11-103, dated November 26, 1990.

B. An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Astra Jet Corporation, Technical Publications, 77 McCullough Drive, Suite 11, New Castle, Delaware 19720. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment (39-7039, AD 91-13-08) becomes effective July 22, 1991.

Issued in Renton, Washington, on June 4, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-14301 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26565; Amdt. No. 1454]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT:

Paul J. Best, Flight Procedures Standards

Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these

SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC, on June 7, 1991.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective July 25, 1991

Fort Payne, AL—Isbell Field, NDB-A, Orig.
Huntsville, AR—Huntsville-Madison County Regional, VOR/DME RWY 12, Orig.
San Francisco, CA—San Francisco Intl, ILS RWY 28L, Amdt. 19
Gunnison, CO—Gunnison County, LOC RWY 6, Amdt. 1, Cancelled
Gunnison, CO—Gunnison County, ILS RWY 6, Amdt. 3
Atlanta, GA—DeKalb-Peachtree, RADAR-1, Amdt. 2
Augusta, GA—Daniel Field, RADAR-1, Amdt. 5
Cartersville, GA—Cartersville, NDB RWY 18, Amdt. 2
Valdosta, GA—Valdosta Regional, ILS RWY 35, Amdt. 5
Valdosta, GA—Valdosta Regional, RADAR-1, Orig.
Idaho Falls, ID—Fanning Field, ILS RWY 20, Amdt. 9
Elkhart, IN—Elkhart Muni, SDF RWY 27R, Amdt. 6, Cancelled
Flemingsburg, KY—Fleming-Mason, VOR/DME-A, Amdt. 4
Okolona, MS—Okolona Muni-Richard Stoval Field, VOR/DME RWY 18, Amdt. 5
Picayune, MS—Picayune Pearl River County, VOR-A, Amdt. 11
Las Vegas, NV—MC Carran Intl, VOR RWY 25L/R, Orig.
Las Vegas, NV—MC Carran Intl, ILS RWY 25R, Amdt. 15
Binghamton, NY—Edwin A. Link Field/Broome County, ILS RWY 34, Orig. Cancelled
Binghamton, NY—Edwin A. Link Field/Broome County, ILS RWY 16, Amdt. 5
Binghamton, NY—Edwin A. Link Field/Broome County, ILS RWY 34, Orig.
Mocksville, NC—Twin Lakes, NDB RWY 9, Amdt. 5
Beaufort, SC—Beaufort County, RADAR-1, Amdt. 2
Chester, SC—Chester Muni, VOR/DME-A, Amdt. 1
Dillon, SC—Dillon County, VOR/DME RWY 7, Amdt. 5
Dillon, SC—Dillon County, NDB RWY 7, Amdt. 5
Plano, TX—Dallas North, VOR-A, Amdt. 1, Cancelled
Renton, WA—Renton Muni, NDB RWY 15, Amdt. 2

Effective June 4, 1991

MC Gregor, TX—MC Gregor Muni, VOR RWY 17, Amdt. 6
San Marcos, TX—San Marcos Muni, VOR/DME-A Amdt. 4
San Marcos, TX—San Marcos Muni, NDB RWY 12 Amdt. 3
San Marcos, TX—San Marcos Muni, ILS RWY 12 Amdt. 4

Effective June 3, 1991

Lakeland, FL—Lakeland Regional, VOR RWY 27, Amdt. 5
Sarasota (Bradenton), FL—Sarasota-Bradenton, VOR RWY 32, Amdt. 8
Hyannis, MA—Barnstable Muni-Boardman/Polando Field, ILS RWY 15, Amdt. 1

Effective May 31, 1991

Chico, CA—Chico Muni, VOR/DME RWY 13L, Amdt. 6
Chico, CA—Chico Muni, VOR RWY 31R, Amdt. 8
Chico, CA—Chico Muni, NDV RWY 13L, Amdt. 4
Chico, CA—Chico Muni, ILS RWY 13L, Amdt. 7
Orland, CA—Haigh Field, VOR-A, Amdt. 5

Effective May 30, 1991

Elkhart, IN—Elkhart Muni, VOR RWY 9, Amdt. 5
Elkhart, IN—Elkhart Muni, VOR RWY 27, Amdt. 12

Effective May 23, 1991

Little Rock, AR—Adams Field, NDB RWY 4L, Amdt. 17
Little Rock, AR—Adams Field, NDB RWY 22R, Amdt. 5
Little Rock, AR—Adams Field, ILS RWY 4L, Amdt. 23
Little Rock, AR—Adams Field, ILS RWY 22R, Amdt. 7
Little Rock, AR—Adams Field, RADAR-1, Amdt. 14
Little Rock, AR—Adams Field, RNAV RWY 22R, Amdt. 9
Little Rock, AR—Adams Field, RNAV RWY 36, Amdt. 9

[FR Doc. 91-14303 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-91-1498; FR-2713-F-02]

RIN 2502-AE84

Mutual Mortgage Insurance and Rehabilitation Loans—Waiver of Seven Unit Rule for Certain Rehabilitation Loans

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule removes the "seven-unit" requirement of 24 CFR 203.42, in certain circumstances. Generally, under § 203.42 a property cannot be insured under the Single Family Mortgage Insurance program if a mortgagor has a financial interest in more than seven other units in projects, subdivisions or other rental properties close in proximity. This amendment exempts mortgagors of single-family properties insured under the section 203(k) rehabilitation loan program in

circumstances where State or local governments have targeted a specific area or neighborhood for redevelopment and have committed "substantial" efforts to this end. The purpose of this rule is to encourage and facilitate rehabilitation activity in the targeted areas.

EFFECTIVE DATE: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director Single Family Development Office of Single Family Housing, Department of Housing and Urban Development, room 9272, 451 Seventh Street, SW. Washington, DC 20410-0500, (202) 708-2700. Hearing- or speech-impaired individuals may call the Office of Housing's TDD number (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)), and assigned OMB control number 2502-0453.

Background

In enacting the National Housing Act (the Act), Congress provided the Department with the authority to insure, and make commitments to insure, rehabilitation loans made by financial institutions. In section 203(k) of the Act (12 U.S.C. 1709(k)), Congress defined "rehabilitation loans" as those made for the purpose of rehabilitating existing one- to four-family structures used primarily for residential purposes. The Department promulgated 24 CFR 203.50, which made rehabilitation loans eligible for insurance under the Single Family Mortgage Insurance program.

To prevent misuse of this program by leaders who may want to circumvent the requirements of the Multifamily Mortgage Insurance program, and to preclude insurance of a concentration of rental units for one investor, § 203.42 was promulgated. Section 203.42 had the effect of severely limiting the use of the section 203(k) insurance program because it limited mortgage insurance coverage to no more than seven units per mortgagor in a particular geographic area. (This limitation is commonly referred to as the "seven unit rule.") Since its inception ten years ago, only 7,000 mortgages have been insured under section 203(k).

The seven unit rule, as applied to rehabilitation loans, can limit expansion of affordable housing and home ownership opportunities. This runs

counter to the Department's objective of increasing such opportunities. For this reason, the Department determined that changes were required to the rule. Several lenders and developers agreed that a successful rehabilitation program must include all, or nearly all, the vacant and deteriorated properties in a neighborhood. Since such an approach may include developers who have an interest in more than seven units, little is gained by applying the limitation of § 203.42 to rehabilitation loans.

Proposed Rule

On March 4, 1991 (56 FR 8941), the Department published, for public comment, a proposed rule that would permit increased use of section 203(k). The Department proposed to achieve this objective by expressly exempting rehabilitation loans from the seven unit rule, provided that the loans are to be used for the rehabilitation of property located in a specific area or neighborhood targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of the neighborhood redevelopment. Accordingly, the Department proposed to amend 24 CFR 203.42 to require a State or local government to submit a plan to the Department describing the program of neighborhood redevelopment, before the Department exempts a section 203(k) rehabilitation loan from the seven unit rule. The Department also proposed to revise and update the language of § 203.42.

By the end of the comment period on May 3, 1991, the Department had not received any comments on the March 4, 1991 proposed rule. The Department is adopting the proposed amendments to 24 CFR 203.42 without change.

Other Matters

Impact on Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is limited to exempting certain rehabilitation loans from the multifamily mortgage insurance program requirements. Any entity, regardless of size, may benefit from this exemption.

Regulatory Agenda

This rule was listed as sequence number 1292 in the Department's Semiannual Agenda published on April 22, 1991 (56 FR 17360, 17386) under Executive Order 12291 and the Regulatory Flexibility Act.

Environmental Review

At the time of publication of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without change. Accordingly, the initial Finding of No Significant Impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. This rule is limited to exempting certain rehabilitation loans from the multifamily mortgage insurance program requirements. No programmatic or policy changes result from promulgation of this rule which would affect existing relationships between Federal, State or local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or

programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

(The Catalog of Federal Domestic Assistance Program Number is 14.108, Rehabilitation Mortgage Insurance)

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians: lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for part 203 continues to read as follows:

Authority: Secs. 203, 211 of the National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. Section 203.42 is revised to read as follows:

§ 203.42 Rental properties.

(a) A mortgage on property upon which there is a dwelling to be rented by the mortgagor shall not be eligible for insurance if the property is a part of, or adjacent or contiguous to, a project, subdivision or group of similar rental properties in which the mortgagor has a financial interest in eight or more dwelling units.

(b) Paragraph (a) of this section shall not apply where:

(1) A mortgage qualifies as a rehabilitation loan under § 203.50 of this part;

(2) The mortgage is to be used for the rehabilitation of property located in a specific area or neighborhood that has been targeted by a State or local government for redevelopment, in accordance with a specific program that involves substantial public or private commitments in support of neighborhood improvement or redevelopment; and

(3) The State or local government has approved, and has submitted to the Commissioner a plan describing the program of neighborhood redevelopment and revitalization, including the geographic area targeted for redevelopment, and the nature and proportion of public or private commitments that have been made in support of the redevelopment program.

(c) No two-, three-, or four-family dwelling, and no single-family dwelling,

if it is part of a group of five or more single-family dwellings held by the same mortgagor, or any part or unit thereof, shall be rented or offered for rent for transient or hotel purposes, as defined in § 203.16, so long as the dwelling is subject to any insured mortgage.

Dated: June 10, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91-14326 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-91-41]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule—Revocation.

SUMMARY: This amendment revokes the regulations for the Dodge Island drawbridges, mile 1089.4, because a high-level fixed bridge has been completed for vehicular use at this same location. Notice and public procedures have been omitted for this action due to the alternative access available.

EFFECTIVE DATES: This rule becomes effective on June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Brodie Rich, (305) 536-4103.

Drafting Information: The drafters of this rule are Mr. Brodie E. Rich, project officer, and Lt. Genelle Tanos, project attorney.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are no longer needed to accommodate the needs of vehicular traffic. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 28, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary.

Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and

criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridge's.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.26 [Amended]

2. In § 117.261 paragraph (pp) is removed and reserved.

Dated: May 29, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91-14190 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6862

[NV-930-91-4214-10; Nev-051742]

Public Land Order No. 6849, Correction; Mineral Withdrawal of a Portion of the Sheldon National Wildlife Refuge, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order will correct three errors in the land description in Public Land Order No. 6849.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702-785-6526.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The legal description in Public Land Order No. 6849, 56 FR 16278-16280, April 22, 1991, is hereby corrected as follows:

1. Page 16279, first column, line 18 from the bottom, "R. 23 E.," should read "R. 23 1/2 E.,".

2. Page 16279, first column, line 13 from the bottom, "R. 23 E.," should read "R. 23 1/2 E.,".

3. Page 16279, second column, line 19 from the bottom, "ENW 1/4," should read "E 1/2 NW 1/4.,".

Dated: June 6, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-14312 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-HC-M

Bureau of Land Management

43 CFR Public Land Order 6863

[CO-932-4214-10; COC-28566]

Withdrawal and Jurisdictional Transfer of Public Land for the Leadville Fish Hatchery; CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 79.74 acres of public land from surface entry and mining for 40 years and transfers administrative jurisdiction to the Fish and Wildlife Service for use in conjunction with the Leadville Fish Hatchery. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT:

Doris Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws (30 U.S.C. ch. 2), and is transferred to the Fish and Wildlife Service for management as a part of the Leadville Fish Hatchery:

Sixth Principal Meridian

T. 9 S., R. 81 W.,

Sec. 36, lots 17, 18, 21, 22, and 24.

The area described contains approximately 79.74 acres of public land in Lake County.

2. Effective on date of publication of this order, the above-described land will be subject to the provisions of the National Wildlife Refuge System

Administrative Act, 16 U.S.C. 668dd, as part of the Leadville Fish Hatchery.

3. This withdrawal will expire 40 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: June 6, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-14315 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-JB-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-437; RM-7284]

Radio Broadcasting Services; Marion and Orrville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallocates Channel 248A from Marion to Orrville, Alabama, substitutes Channel 247A for Channel 248A at Orrville, and modifies the construction permit of Marion Radio, Inc. for Station WJAM-FM, as requested, to specify operation on Channel 247A, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. The allotment of Channel 247A to Orrville will provide the community with its first local aural transmission service without depriving Marion of local aural service. See 55 FR 41705, October 15, 1990. Coordinates used for Channel 247A at Orrville are 32-18-00 and 87-09-30. With this action, the proceeding is terminated.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-437, adopted May 31, 1991, and released June 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 248A at Marion and adding Channel 247A, Orrville.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14365 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-597; RM-7118 and RM-7321]

Radio Broadcasting Services; Wiggins and D'Iberville, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 250C2 for Channel 250A at Wiggins, Mississippi, and modifies the construction permit for Station WOTC, Channel 250A, to specify operation on the higher class channel in response to a petition filed by John F. White. See 55 FR 326, January 4, 1990. The coordinates for Channel 250C2 at Wiggins are 30-40-23 and 89-09-48. John F. White filed a counterproposal (RM-7321) (Public Notice given March 19, 1990, Report No. 1811) requesting the reallocation of Channel 250C2 from Wiggins to D'Iberville, Mississippi. A Request for Supplemental Information has been issued affording petitioner an opportunity to submit information with regard to this proposal.

EFFECTIVE DATE: July 29, 1991.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 89-597, adopted May 30, 1991, and released June 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 250A and adding Channel 250C2 at Wiggins.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14366 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-571; RM-7033]

Radio Broadcasting Services; Benton, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Stonewood Communications Corporation, allots Channel 226A to Benton, Tennessee. See 54 FR 52423, December 21, 1989. Channel 226A can be allotted to Benton, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) south to avoid a short-spacing to Station WWZZ(FM), Channel 226A, Karns, Tennessee. The coordinates for Channel 226A at Benton are North Latitude 35-04-00 and West Longitude 84-43-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 29, 1991. The window period for filing applications will open on July 30, 1991, and close on August 29, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-571, adopted May 31, 1991, and released June 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Channel 226A, Benton.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14367 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 56, No. 116

Monday, June 17, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

Minimum 60 Day Written Notice Period for Reduction in Force Actions

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to issue regulations that will require agencies to give employees at least 60 days written notice prior to a reduction in force when 50 or more employees are to receive separation notices in the same competitive area. The 60-day requirement would not apply in situations caused by an immediate shortage of funds or other unforeseeable circumstances, or when fewer than 50 employees are being separated. An agency may meet the 60-day reduction in force notice requirement either by issuing a general notice which is followed by a specific notice, or by issuing a 60-day specific notice. At present, agencies are required to give employees at least 30 days advance written notice prior to a reduction in force action.

The new regulations will also permit agencies to issue reduction in force notices to employees more than 90 days prior to the reduction in force by simply notifying OPM. Under the present regulations, agencies may not issue reduction in force notices to employees more than 90 days prior to a reduction in force action without the prior approval of OPM.

Finally, the new regulations clarify that agencies must provide specific placement and unemployment insurance information to employees who have received specific notices of separation by reduction in force. The new regulations add a requirement that when 50 or more employees receive notices of separation by reduction in force at a worksite, the agency must, at the same

time it issues notices to employees, also notify (1) the employees' bargaining unit representative if the employee is covered by a collective bargaining agreement, (2) the appropriate State dislocated worker unit, as designated under title III of the Job Training Partnership Act, and (3) the chief elected official of the local governmental jurisdiction(s) where the separations will take place.

DATES: Written comments will be considered if received no later than August 16, 1991.

ADDRESSES: Send or deliver written comments to: Associate Director, Career Entry Group, room 6F08, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Edward P. McHugh or Thomas A. Glennon (202) 606-0960.

SUPPLEMENTARY INFORMATION: 5 CFR 351.801(a) presently provides that an agency is required to give an employee at least 30 days written notice of a reduction in force action. The agency may either (1) issue a general reduction in force notice at least 30 days before the reduction in force effective date and follow it with a specific notice at least 10 days before the reduction in force effective date, or (2) issue a specific notice at least 30 days before the reduction in force effective date. 5 CFR 351.801(b) of these proposed regulations changes the minimum 30 day reduction in force notice requirement to 60 days when 50 or more employees in the same competitive area receive separation notices. However, in situations caused by an immediate shortage of funds or other unforeseeable circumstances, the proposed regulations specify that the agency may continue to provide a minimum of 30 days notice.

5 CFR 351.801(b) presently provides that an agency may not issue either a general or specific reduction in force notice more than 90 days prior to the date of the reduction in force action unless OPM approves the longer notice period. Proposed new 5 CFR 351.801(d) provides that the agency must simply notify OPM if it uses a reduction in force notice period of more than 90 days.

5 CFR 351.804 is revised by adding new paragraphs (a) and (b). Paragraph (a) clarifies that agencies must provide information on the Reemployment Priority List and OPM's Displaced

Employee Program to each employee who has received a specific notice of separation by reduction in force. Paragraph (a) also notes that agencies should advise these same employees on how to apply for unemployment insurance benefits through their appropriate State government office. Paragraph (b) includes a new requirement that, when an agency issues reduction in force separation notices to 50 or more employees in a competitive area, the agency must, at the same time it issues reduction in force notices to the employees, notify (1) the bargaining unit representative(s) of the affected employees, (2) the State dislocated worker unit, as designated or created under title III of the Job Training Partnership Act, and (3) the chief elected official of the unit of local government(s) within which the separations will take place.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in 5 CFR Part 351

Government employees.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM proposes to amend part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. Section 351.801 is revised to read as follows:

§ 351.801 Notice period.

(a) Except as provided in paragraph (b) of this section, each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 30 full days before the effective date of release.

(b) Each competing employee selected for release from a competitive level under this part is entitled to a written notice at least 60 full days before the effective date of release if 50 or more employees in a competitive area receive separation notices. When a reduction in force is caused by an immediate shortage of funds or other unforeseeable circumstances, each competing employee covered by this paragraph is entitled to a written notice at least 30 full days before the effective date of release.

(c) Under paragraphs (a) or (b) of this section, when a general notice is supplemented by a specific notice, an agency may not release an employee from his or her competitive level until at least 10 days after the employee's receipt of the specific notice.

(d) A notice shall not be issued more than 90 days before release unless the agency has notified OPM.

(e) The notice period begins the day after the employee receives the notice.

3. Section 351.804 is revised to read as follows:

§ 351.804. Notification of eligibility for reemployment and other placement assistance.

(a) An employee who receives a specific notice of separation under this part must be given information concerning the right to reemployment consideration under subparts B (Reemployment Priority List) and C (Displaced Employee Program) of part 330 of this chapter. The same employee must also be given appropriate information concerning how to apply for unemployment insurance through his or her appropriate State program. This information should be included in or with the specific reduction in force notice. Otherwise, a separate supplemental notice covering this information must be given to the employee.

(b) When more than 50 employees in a competitive area receive separation notices under this part, at the same time that the agency issues specific notices of separation, the agency must also provide notification of this action to:

(1) The representative(s) of the affected employees at the time of the notice, as defined in their applicable collective bargaining agreement;

(2) The State dislocated worker unit, as designated or created under title III of the Job Training Partnership Act; and

(3) The chief elected official of local government(s) within which these separations will occur.

[FR Doc. 91-14282 Filed 6-14-91; 8:45 am]

BILLING CODE 4325-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 201, 202, 204, 291, and 302

[Docket No. 47582, Notice No. 91-10]

Procedures and Evidence Rules for Air Carrier Authority Applications

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to revise parts 201, 202, 204, 291, and 302 to consolidate and make more consistent the fitness data requirements and filing procedures for all carriers (certificated, all-cargo, and commuter). This will update requirements to reflect our existing needs as they have evolved over the past few years, provide better guidance for carriers, expedite the processing of fitness applications, and make administrative changes to update organizational references.

DATES: Comments must be received on or before August 16, 1991.

ADDRESSES: Comments should be directed to the Documentary Services Division, Docket 47582, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-9721.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the Documentary Services Division at the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 47582. The postcard will be date/time stamped and returned to the commenter. All communications on or before the specified closing date will be considered by the Assistant Secretary for Policy and International

Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in Docket 47582. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

Introduction

Section 401 of the Federal Aviation Act of 1958, as amended, requires that air carriers be found "fit, willing, and able" before being awarded a certificate of public convenience and necessity. Similarly, sections 418 and 419 impose fitness requirements on all-cargo air carriers and commuter air carriers, respectively. Section 401(r) provides that the fitness requirements of the Act are continuing requirements.

The Civil Aeronautics Board (CAB) was originally assigned the responsibility for determining and monitoring air carrier fitness. This responsibility was transferred to the Department of Transportation on January 1, 1985, following the sunset of the CAB.

The fitness data requirements are currently contained in parts 291 Subpart B-All Cargo Air Service Certificates for domestic all-cargo carriers and Part 204-Data to Support Fitness Determinations for certificated carriers and commuter carriers.

The procedural requirements pertaining to fitness applications are contained in parts 201, 202, and 302. Part 302 Subpart Q-Expedited Procedures for Processing Licensing Cases contains the Department's procedural rules applicable to proceedings on applications for section 401 certificates. Similarly, Part 201-Applications for Certificates of Public Convenience and Necessity contains additional procedural rules. Part 202-Certificates Authorizing Scheduled Route Service: Terms, Conditions, and Limitations states that carriers holding certificates of air carrier authority shall comply with certain terms, conditions, and limitations.

The Proposed Changes

We find several areas where we believe amendments to parts 201, 202, 204, 291, and 302 are advisable. In general, we propose to amend the rules to consolidate the fitness data requirements for all types of authority—passenger and domestic all-cargo certificate and commuter—into one area (part 204) and to make the requirements

more uniform for the various types of operations. Simultaneously, we are consolidating the procedural requirements (parts 201, 202, and 302) to remove duplication in different rules and to make them more consistent. In addition, as an administrative matter, we propose to substitute applicable references to the Department for the obsolete CAB references.

Fitness Data Filing Requirements

The primary purpose of revamping part 204 is to make the fitness filing requirements for applicants more uniform and to place them all in one section of our rules. A detailed explanation of the specific changes follows.

Proposed § 204.3

We are proposing to consolidate in a new § 204.3—Applicants for new certificate or commuter air carrier authority the evidentiary requirements to be addressed by applicants for any type of authority for which a fitness determination is required. The new § 204.3 list of evidentiary requirements would replace the four lists contained in § 204.5 (new certificated carriers), § 204.6 (commuter carriers providing essential air service), § 204.7 (nonessential air service commuter carriers), and § 291.11 (domestic all-cargo certificated carriers). The proposed § 204.3 would be based upon § 204.5, with a small number of additions and deletions.

We propose to add a new paragraph (d) to new § 204.3 requiring applicants that are corporations to submit a statement from the agency of their state government that maintains corporation registrations attesting to the corporation's standing with the state. It has been our experience that applicants claiming corporate status occasionally lack such status. For example, in one recent case, we learned that an applicant had lost its corporate status because of its failure to pay taxes due to the state. Such a failure raises concerns not only about the applicant's financial viability and its disposition to comply with the applicable laws and regulations, but also about what entity will actually operate the service and be responsible for liabilities it may incur.

Paragraphs (e)(3) and (f)(2) of § 204.5 (new paragraphs (f)(3) and (g)(2) of § 204.3) would be amended to require information on the total number of shares of an applicant's stock that are issued and outstanding.

When an individual or organization that holds a substantial interest in an applicant is not the beneficial owner of the stock, new paragraph (g)(2) would

require a statement of the citizenship of the beneficial owner for whose account the stock is held. Occasionally, an applicant has stated that a significant amount of its stock is held by, or registered in the name of, a securities or brokerage firm. Having information about the ultimate owner(s) would enable the Department to determine with greater certainty whether an applicant is owned and controlled by U.S. citizens.

Sections 204.5(e)(5) and (f)(4) are being amended (new §§ 205.3(f)(5) and (g)(4)) to require the key personnel of and holders of a substantial interest in an applicant to disclose any past ownership, directorship or officership positions held with any aviation-related entities. This information is required by the Department in investigating whether an applicant's owners or managers were involved in any compliance matters in a previous aviation relationship.

Paragraphs (i) and (j) of § 204.5 (new paragraphs (j) and (k) of § 204.3) would be revised to require applicant to furnish financial statements that are current to within three months of the date of application, unless the Department determines that, because of unusual circumstances in a particular case, such a requirement would be unreasonable. Applicants subject to 10K and 10Q reporting requirements of the Securities and Exchange Commission would be required to file recent 10Q reports to meet this requirement. The current rule requires applicants to file financial statements or SEC reports only for the last three years, calendar or fiscal; however, in the ensuing months, a company's financial situation could have changed dramatically, making it impossible for us to accurately assess its present financial fitness.

Section 204.5(m) is duplicative of a similar statement in § 204.1 and is being removed.

Paragraphs § 204.5 (o), (p), and (q) presently require an applicant to describe, respectively, all formal complaints lodged within the past five years against it, any relevant corporations, key personnel or owners regarding compliance with the Act or related orders, rules or requirements; all orders issued in the past ten years finding it, any relevant corporations, key personnel or owners guilty of violations of the Act or related orders, rules or requirements; and all actions taken in the past ten years by the FAA under certain specified sections of the Federal Aviation Regulations against it, any relevant corporations, key personnel or owners.

We propose to replace these paragraphs with new § 204.3(o). Under

the revised section, applicants would be required to furnish a description of the current status of all pending investigations and enforcement actions undertaken, or formal complaints filed, by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Act or orders, rules, regulations, or requirements issued pursuant to the Act, and any corrective actions taken.

This revision would make a significant reduction in the evidentiary requirements placed on applicants. The proposed new rule would eliminate the necessity for applicants to search or inquire into the records of a number of persons and business entities as far back as ten years and report all matters regarding compliance with the Act and related regulations. When the current regulations were promulgated in 1980, the Department did not have computerized carrier compliance records available to it. When this capability was added, we found that the material on closed enforcement cases filed by applicants with previous operating histories was often duplicative of the data we had at hand. Therefore, to improve our ability to make a current and complete assessment of an applicant's compliance disposition without burdening it with the necessity of filing duplicative material, we propose to limit the evidentiary requirements in this area to information on the current status of open investigations and formal complaints. However, consideration will be given to the total number and the nature of such actions—both those reported by the applicant and those recorded in the Department's files—and the time period over which they occurred in determining whether additional information will be required from an applicant.

We also propose to add a new paragraph (q) which would require applicants to submit a description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board (NTSB) Regulations (49 CFR 830.2)) experienced by the applicant, its personnel, or any relevant corporation, which occurred either (1) during the year preceding the date of application, or (2) at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself. In addition, applicants would be required to describe the status of any pending investigations or enforcement actions against it, its

employees, or relevant corporations as a result of any accident or incident, as well as actions taken to prevent their recurrence. Historical accident and incident data from both FAA and NTSB records are available to us, thus obviating a need for such information from applicants for earlier events. However, in the case of those few applicants that have a history of accidents or incidents that warrants additional investigation, we may need to require the submission of additional information.

Sections 204.5(s) and 204.6(a)(19), which require statements from state agencies concerning consumer complaints, would be deleted since we have found that information received in response to these rules has had no material decisional value.

Section 204.5(t)(3) (new § 204.3(t)(2)) would also be amended to require all applicants to furnish, in addition to a forecast income statement, an itemization of all pre-operating and start-up costs associated with initiation of the proposed service. Such an itemization should include, at a minimum, those costs related to obtaining government approvals, establishing stations, introductory advertising, aircraft and equipment deposits, office and hangar space deposits or rentals, insurance, training, and salaries earned prior to start-up. These submissions would ensure that an applicant has factored into its funding estimates these often overlooked cost categories and that the cost estimates are reasonable for the proposed operations. The existing § 204.5(t)(3) is limited only to those carriers not currently operating commercial flights. We propose to remove this limitation so that all applicants must submit this information.

New § 204.3(t)(2) would also require forecast income statements to show the data broken down by quarter for the first year of operations. This information would enable us to examine the reasonableness and completeness of the applicant's expense estimates in light of the type and scope of air service proposed, and to ensure that the company has arranged for sufficient financial resources to carry it through the normally difficult early months of new operations.

Finally, we propose adding a new paragraph (v) to § 204.3 which would require all applicants to provide an express certification that the information contained in their application is truthful and accurate. The certification would state:

Pursuant to title 18 United States Code Section 1001, I [the individual signing the application], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. 1001 shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

The rule would state that this certification must also be included in all subsequent written submissions filed by the applicant in connection with its application.

It should also be noted that the Department itself may undertake enforcement action against any person who asserts a false material fact or omits from the submission a required material fact, under the Program Fraud and Civil Penalties Act of 1986 (Pub.L. 99-509, 31 U.S.C. 3801-3812). The proposed certification would also encourage applicants to give more careful attention to statements made in their submissions, and perhaps reduce spurious filings.

As noted earlier, applicants for domestic all-cargo certificates under section 418 would be made subject to the fitness requirements of § 204.3. The domestic all-cargo carriers represent a small segment of all carriers holding authority from the Department. Presently, only four carriers hold section 418 certificates as their sole type of authority, and over the past three years, the Department has received only two applications for section 418 authority, one of which was subsequently withdrawn. We have reviewed the existing fitness data requirements for domestic all-cargo applicants contained in § 291.11. The majority of the requirements were the same as those in the existing part 204 requirements for passenger certificate authority. We propose to eliminate the requirements for information on the total number of employees (§ 291.11(b)(2)), description of ground facilities (§ 291.11(b)(6)), cash flow statements (§§ 291.11(b)(7)(iii) and (c)(2)), and payment of cargo losses or damage claims (§ 291.11(c)(4)). These elements are not required in the existing part 204 and we do not believe that they are necessary for every fitness evaluation. Of course, we may find it necessary to require such information on a case-by-case basis when it is pertinent to a specific fitness evaluation.

Two elements currently contained in § 291.11 for section 418 domestic all-

cargo carriers would be incorporated in part 204. First, a brief chronological narrative of the applicant's history, currently required under § 291.11(b)(3), would now be required under § 204.3(r). Appropriate subjects to be included would be the applicant's predecessors, owners, date of formation, and the types of service performed.

Second, § 291.11(c)(5), which requires an applicant to provide the status of its application for any additional FAA authority needed to conduct its proposed operations, and to identify the FAA office and person responsible for processing the application, would be revised and incorporated into current § 204.5(u), which concerns any federal, state or foreign authority held by the applicant. (Section 204.5(u) would be redesignated § 204.3(s)). Since we routinely inquire of the appropriate FAA officials regarding applicants' need for and the status of any additional FAA authority, there is no need for the applicant to furnish such information. Therefore, the rule would be changed to require an applicant merely to identify the local FAA office and personnel responsible for processing the application.

As also noted earlier, commuter carriers would be covered by the data requirements of the new § 204.3. Applicants for commuter carrier authority currently must provide the evidence listed in § 204.7, which duplicates all of the requirements of § 204.5 except for the ownership and control information contained in §§ 204.5 (e)(5), (f), and (g), and the estimated cost and traffic data relative to the applicant's proposed service contained in § 204.5(t). Yet, these issues are as relevant to commuter carriers as they are to certificated carriers.

When part 204 was promulgated in 1980, commuter air carriers were, for the most part, small organizations which as a group did not constitute a significant segment of the airline industry. Many commuter airlines today are large organizations which annually transport many thousands of passengers throughout complex market networks, often in code-sharing relationships with major certificated carriers. In 1989, for example, commuter airlines enplaned 16 million passengers in scheduled service, which was 80 percent of the 20 million enplaned over the same period by medium regional certificated air carriers operating scheduled passenger service.¹

¹ Computed from statistics compiled in U.S. Department of Transportation, Research and Special Programs Administration, Air Carrier

Also in 1989, the commuter air carrier segment surpassed the medium regional certificated carrier segment 2.86 billion to 2.24 billion in revenue passenger miles flown.²

The Department requires information on those who own and control a prospective commuter air carrier for the same reasons it requires such information for certificate applicants—to allow us to ascertain their citizenship, compliance history and financial ability to support the carrier's operations. Similarly, it is not a less important task of the Department to protect the consumers of commuter air service from unacceptable and preventable risks resulting from inadequate financing than it is to protect the customers of certificated carriers. Thus, we must have access to the cost and traffic forecasts of commuter applicants in order to assure that they have an adequate knowledge and understanding of the costs of providing the air transportation proposed.

Proposed § 204.4

The additional evidentiary requirements peculiar to carriers proposing to provide Essential Air Service (EAS), which are now included among the requirements of § 204.6, would be contained in a new § 204.4. Carriers proposing to provide essential air transportation.

Presently, § 204.6 divides carriers proposing to provide EAS into three categories, covered by §§ 204.6 (a), (b) and (c). Since all commuter carriers serving eligible points have now had their fitness determined, paragraph (a) is no longer needed and is being removed. The rule would now have two categories of carriers, those proposing to conduct unsubsidized EAS and those applying to provide subsidized EAS. Both types of applicants would be required to file the evidence presented in new § 204.3.

In addition, as evidence that they are capable of providing air service reliably, carriers applying to provide unsubsidized EAS would continue to be required to submit the data elements currently listed in §§ 204.6(a) (13), (14), (20), (21), (b)(3)(iii), (iv), and (4). We are also adding a requirement that such applicants submit a pro-forma income

statement covering the first year of such operations to demonstrate their ability to maintain the service from an economic standpoint.

Carriers proposing to provide subsidized EAS would be required to file the same information required of applicants to provide unsubsidized EAS plus the necessary costing information currently contained in § 204.6(c) to establish the carrier's subsidy requirement. Applicants for subsidized EAS are already providing this information.

Finally, in order to minimize the filing burden on applicants, the introductory paragraph of new § 204.4 continues to advise applicants that, before submitting their evidence, they may contact the Department's staff to ascertain what information is already available to the Department and thus need not be resubmitted.

Proposed §§ 204.5 and 204.6

Section 401(r) of the Act states that all carriers subject to the initial fitness requirement (that is, carriers holding section 401 certificates, section 419 commuter carriers, and section 418 domestic all-cargo carriers) are also subject to the continuing fitness requirement. In practice, we have been monitoring changes in commuter carrier operations and all-cargo operations for some time, and have been undertaking reexamination of such carriers' fitness when appropriate. We are now proposing to amend our rules to reflect these practices. To accomplish this, we propose to redesignate § 204.5 as Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership or management and § 204.6 as Certificated and commuter carriers proposing a change in operations, ownership, or management which is not substantial.

We are also proposing to clarify and give more examples of what constitutes a reportable substantial change based on our experience over the past few years in monitoring carrier fitness.

We note that, initially, carriers need only notify us of impending substantial changes. They may proceed to implement these changes pending our review. After reviewing these circumstances, the Department would then inform the carrier what additional information, if any, must be filed in support of its continuing fitness.

Currently, the term "substantial change" is defined in terms involving operations. In Department orders, we have held that substantial changes in ownership and management and

changes from small to large aircraft operations require filings under the section.³

Reportable changes fall into three categories: substantial changes in ownership, substantial changes in management, and substantial changes in operations.

A substantial change in ownership would be defined as the acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation.⁴ The source of the 10 percent figure is the CAB's traditional holding that ownership of such an amount of voting stock represents at least the potential for significant influence on a carrier's operations. Before it expired on December 31, 1988, section 408(f) of the Act required in the context of merger approvals that any person beneficially owning 10 percent or more of the outstanding voting stock of an air carrier "shall be presumed to be in control of such air carrier unless the Board finds otherwise." Since parties in control of a carrier affect its compliance disposition, we need to be advised of changes in control to determine if further review of this fitness element is necessary.

The Department also has a statutory responsibility to ensure that companies holding air carrier authority from the Department are U.S. citizens. Section 101(16) of the Act contains the definition of U.S. citizenship:

(16) "Citizen of the United States" means (a) an individual who is a citizen of the United States or one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or

³ See, for example, Orders 83-9-88 (Midway (Southwest) Airways Co. Fitness Investigation), 85-2-4 (Continuing Fitness Investigation of Golden West Airlines), 85-6-16 (Application of Trans World Airlines for Continuing Fitness Review), 86-9-89 (Fitness Determination of Air Cape, Inc.), 89-2-46 (Trans Continental Airlines, Inc., Fitness Determination), and 89-8-7 (Application of Mid Pacific Air Corporation).

⁴ In complementary revisions, we are also proposing to change the definition of "substantial interest" currently in § 204.2(n) (new § 204.2(o)) to mean "beneficial control of 10 percent or more of the outstanding voting stock." Also, the requirement currently in § 204.5(e)(5) requiring identification of 5 percent or more of any voting stock held by an applicant's key personnel in any other aviation-related entity would be changed to 10 percent or more in new § 204.3(f)(5).

Industry Scheduled Service Traffic Statistics Quarterly, Fourth Quarter and Twelve Months Ended December 1988 and 1989, Center for Transportation Information, Cambridge, MA. Medium regional certificated carriers are those holding section 401 authority that earn less than \$10 million in annual operating revenue or that operate small aircraft (60 seats or less or 18,000 pounds maximum payload or less). In this respect, small certificated carriers' operations are comparable to those of commuter air carriers.

controlled by persons who are citizens of the United States or of one of its possessions.

The Department and the CAB before it have also interpreted section 101(16) to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Our examination of a carrier's management, which is one of the three major categories of our fitness review, focuses on their qualifications and compliance record, but we must also make a determination that the composition of the management team enables the carrier to continue to meet the definition of U.S. citizenship. Since any significant change in this group of individuals has the potential for affecting the fitness or citizenship of the carrier, we propose that a carrier report to the Department a change in its president, chief executive officer or chief operating officer, and/or a change in at least half of its other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

New reportable substantial operational changes would include (1) a petition for protection from creditors under the federal bankruptcy laws or a filing of a plan of reorganization under Chapter 11 of the federal bankruptcy laws, or (2) for a carrier holding a section 401 or a section 418 certificate, a change from operations with small aircraft (those designed to hold 60 seats or less) to, or the addition of, operations with large aircraft.⁵ Our initial fitness evaluation is based on the scope of operations proposed and the financial position of the company at the time the application is filed. Any of the circumstances listed above could materially affect the basis for our initial fitness determination. Thus, we would want to be notified of any change of these types so that we could assess whether a fitness reevaluation is warranted.

Information supporting continuing fitness. Once the Department has received a description of the change being proposed by an air carrier, it would determine what, if any, additional information is required in order to establish that the proposed change would not adversely affect the continuing fitness of the carrier. In cases where the carrier's fitness does not appear to be at issue or where the

Department already has information sufficient to resolve the issue, the Department would advise the carrier that no additional information is required at that time. In situations where a proposed change appears to effect one or more areas of the carrier's fitness, the Department would instruct it to supply updated fitness information. Thus, a carrier would be relieved of the obligation to file automatically all of the evidence required by the rule to support its continuing fitness.

We are proposing to supplement the data elements (as currently listed in § 204.4) to be addressed when a carrier has undergone a substantial change. We reiterate that a carrier should notify us of the substantial change and, after reviewing the nature of the change, we would notify the carrier which information elements it should file. Furthermore, if the data satisfying any of those information requests have not changed or have been submitted in conjunction with another matter before the Department, the carrier may so indicate, with a reference to the date and place of any filings.

These added data elements are: (1) information on all persons having a substantial interest in the carrier, including name, address, citizenship, number of shares of applicant's voting stock held and percentage of the total issued and outstanding, citizenship and principal business of any person for whose account such interest is held, and interest in any other aviation-related entity; (2) a statement of citizenship for any new holders of a substantial interest who are non-US. citizens; (3) for carriers with corporate forms of organization, a statement from the carrier's state government affirming that the carrier is in good corporate standing with the state; (4) a list of the carrier's subsidiaries, the principal business of each and its relationship to the applicant; (5) a list of the carrier's shares of stock in or control of any aviation-related entity; (6) a list of each action and outstanding judgment for more than \$5,000; (7) the number of actions and outstanding judgments of less than \$5,000; (8) a description of any aircraft accidents or incidents that occurred during the past year or that are currently under investigation; (9) a forecast income statement and itemization of pre-operating and start-up costs; (10) current financial statements,

including footnotes; and (11) a description of its aircraft fleet and plans for acquisition of additional fleet.

Our case work over the past few years has highlighted the importance of obtaining updates of this information in assessing the continuing fitness of carriers. As a result, we find it advisable to put carriers on notice by our rules of the types of information they may be required to submit when undergoing a substantial change in operations.

Proposed § 204.6

We are also proposing to redesignate § 204.3—Certificated carriers proposing a change in operations which is not substantial as § 204.6 and to amend that section to cover commuter and domestic all-cargo carriers as well as certificated carriers under its provisions.

Proposed § 204.7 Pertaining to Dormancy

The dormancy provisions currently governing certificated passenger and commuter carriers and contained in § 204.8 would be redesignated as § 204.7. We are also proposing several administrative changes. First, consistent with our overall approach of making part 204 applicable to all air carriers, we would make domestic all-cargo carriers subject to the dormancy provisions of the new § 204.7 and eliminate the similar, existing dormancy provision that governs domestic all-cargo carriers (§ 291.15). Second, we propose to delete the language currently in § 204.8 which distinguishes between dormant carriers which had been found fit before the effective date of the amended rule (December 8, 1986), as this provision is now moot since more than one year has passed since the amendment was made effective. All dormant carriers, including carriers certificated under sections 401 or 418 and commuter carriers, would be referred to the evidentiary requirements of new § 204.3.

Finally, in order to resolve confusion expressed by some carriers, we are removing the term "automatically" at the end of § 204.8(a). The revocation for dormancy occurs only after the dormant carrier has been given two separate notifications that its authority will be revoked at the end of the one-year dormancy period if it does not commence or resume Operations by that time. Moreover, carriers are also notified that any such revocation will be without prejudice, and they may reapply for authority at any time. A dormant carrier may also request an exemption from the dormancy provisions for good cause.

⁵ Commuter air carriers by definition (section 416(b)(4) of the Act, as modified by CAB Rule ER-1123, May 17, 1979) may conduct scheduled passenger operations only with aircraft of 60 seats or less. Therefore, if a commuter air carrier desired to engage in large aircraft operations, it would have to file an application for a certificate and disclose the details of its proposed change in operations.

⁶ The classification "subsidiaries" is also being added to the types of entities defined as "relevant corporations" in new § 204.2(m). Information on a carrier's subsidiaries is necessary because of their potential for draining a carrier's funds and affecting its compliance disposition.

Proposed Changes in Procedural Rules

Part 201 contains the procedures to be followed by persons in preparing and filing applications for certificates of public convenience and necessity. We propose to apply these procedural requirements to all fitness applications filed under Part 204 rather than just to section 401 certificate applications. We also propose as an organizational matter to incorporate the existing portion of part 202 dealing with certificate terms, conditions, and limitations into part 201. We propose to retitle part 201 to read: Part 201—Air Carrier Authority under Title IV of the Federal Aviation Act, and to divide it into two subparts as follows: Subpart A—Application Procedures, and Subpart B—Certificate Terms, Conditions, and Limitations.

We propose to amend § 201.4—General provisions concerning contents to eliminate information pertaining to the applicant's fitness since that subject is covered in part 204. Thus, as amended, § 201.4 would address the form of the application, statements pertaining to the scope of the authority, and any additional information that the applicant wishes to submit.

Section 201.5—Operations other than between fixed points is to be removed because it is no longer applicable. Section 201.6 is being redesignated as § 201.5.

Under new Subpart B—Certificate Terms, Conditions, and Limitations, the first section would be new § 201.6—Applicability (currently § 202.1). We would revise this section to make it applicable to all certificate authority, including charter, scheduled and domestic all-cargo.

Current § 202.2—Failure to comply would be redesignated § 201.7—General certificate conditions and incorporate several certificate conditions currently contained in § 291.13, which pertains to domestic all-cargo carriers. Section 201.7(a) would contain the material currently in § 202.2. Section 201.7(b) dealing with reporting requirements is substantively similar to § 291.13(e), as proposed § 201.7(c) is similar to § 291.13(f). These paragraphs are applicable to all certificate authority, whereas the proposed § 201.7(d) would incorporate provisions of §§ 291.13 (c) and (d), which are applicable only to domestic all-cargo service. New § 201.7(e) would contain the provision currently in § 202.12—Filing requirements for adherence to Montreal Agreement. Section 202.11—Nonstop authorization is no longer necessary since certificates for domestic authority no longer contain routes and the points authorized in foreign scheduled air

service and any applicable restrictions are contained in the certificates.

Therefore, with the relocation of the subject matter of §§ 202.1 and 202.2 to part 201 and the removal of §§ 202.11, part 202 is obviated, and we propose to remove it.

All-Cargo Carriers

Presently, the evidentiary filing requirements and the procedural rules applicable to filings for section 418 domestic all-cargo authority are contained in subpart 8 of part 291. We are now proposing to bring section 418 applications under the evidentiary regulations of part 204 and the procedural rules of newly titled Part 201—Air Carrier Authority under Title IV of the Federal Aviation Act, which refers applicants to the requirements set forth in Part 302—Rules of Practice in Proceedings. The latter two parts contain the procedures to be followed in processing applications for all other types of authority requiring initial fitness determinations. Thus, domestic all-cargo certificate applications would follow the same procedures as other certificate applications.

Under current part 291 rules, once the Department has determined that an application for all-cargo authority is complete, it prepares a summary of the application for publication in the *Federal Register*. Anyone wishing to file comments on the fitness of the applicant must do so within 15 days of publication. The applicant has 14 days to respond after receiving any such comments. Part 302 procedures govern in the case of opposed applications.

The proposed revision would substitute the "expedited" subpart Q, part 302 procedures for the part 291 rules. In most initial certificate application cases under subpart Q, once the application is deemed to be complete, the Department analyzes the available fitness evidence and issues an order to show cause containing its tentative findings with regard to the applicant's fitness. A summary of this order is then published in the *Federal Register*. Any person wishing to object to the findings must do so with 15 days; the applicant has 10 days to respond to any objections received. The use of show-cause procedures thus enables interested parties to have the benefit of a detailed presentation in the show-cause order of the applicant's qualifications and service proposal as well as the Department's analysis of the evidence submitted.

We also propose to remove § 291.13—Certificate conditions. All of these conditions are now covered or would be included under different provisions.

Paragraph (a) of § 291.13 is found in section 101(16) of the Act and in § 291.22; paragraphs (b), (c), (d) and (f) are covered in § 201.7; paragraph (e) is found in § 291.50; and paragraph (g) is covered by section 401(h) of the Act.

Finally, since section 418 domestic all-cargo carriers would now be subject to the notification and fitness reexamination provisions of part 204, we would remove the requirement for notification of changes by these carriers currently in § 291.14.

Executive Order 12291, Federalism Assessment, Regulatory Flexibility Act Analysis and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a preliminary regulatory impact analysis is not required. The proposed regulation amendments are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies. The projected economic and regulatory impact of these amendments may be found in the Regulatory Evaluation contained in the public docket. A copy of that evaluation may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

The Department has considered the implications of this proposed action under the requirements of Executive Order 12612, Federalism, and has determined that the preparation of a Federalism Assessment is not warranted. The regulations herein would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in

strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. I certify that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities. The ability of such entities to engage in air carrier operations essentially would be unaffected by the proposed regulation amendments.

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35 under *DOT No.*: 3492; *OMB No.*: 2106-0023; *Administration*: Department of Transportation, Office of the Secretary; *Title*: Procedures and Evidence Rules for Air Carrier Authority Applications; *Proposed Use of Information*: To determine whether carriers are "fit" to engage in their proposed air transportation operations; *Frequency*: On occasion; *Burden Estimate*: 8,048 hours; *Respondents*: U.S. air carriers; *Forms(s)*: None; *Average Burden Hours per Respondent*: 39 hours and 48 minutes. For further information contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735, or Edward Clarke or Wayne Brough, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.

List of Subjects

14 CFR Parts 201, 202 and 204

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 291

Administrative practice and procedure, air carriers, Reporting and recordkeeping requirements.

14 CFR Part 302

Administrative practice and procedure, air carriers.

Proposed Rule

For the reasons set out in the preamble, title 14, chapter II of the Code of Federal Regulations is proposed to be revised as follows:

1. Part 201 is revised to read as follows:

PART 201—AIR CARRIER AUTHORITY UNDER TITLE IV OF THE FEDERAL AVIATION ACT

Subpart A—Application Procedures

Sec.

- 201.1 Formal requirements.
- 201.2 Amendments.

Sec.

- 201.3 Incorporation by reference.
- 201.4 General provisions concerning contents.
- 201.5 Advertising and sales by applicants.

Subpart B—Certificate Terms, Conditions, and Limitations

- 201.6 Applicability.
- 201.7 General certificate conditions.

Authority: 49 U.S.C. 1324, 1371, 1372, 1373, 1377, 1381, 1386, 1389.

Subpart A—Application Procedures

§ 201.1 Formal requirements.

(a) Applications for certificates of public convenience and necessity under section 401 of the Federal Aviation Act and for domestic all-cargo air service certificates under section 418 of the Act, or amendments thereof, shall meet the requirements set forth in part 302 of this chapter as to general requirements, execution, number of copies, service, and formal specifications of papers.

(b) Any person desiring to provide air transportation as a commuter air carrier must comply with the registration provisions of part 298 of this chapter and submit data to support a fitness determination in accordance with part 204 of this chapter. An executed original plus two (2) true copies of the registration form and fitness data shall be filed with the Chief, Air Carrier Fitness Division.

(Secs. 416(b), 72 Stat. 771; 49 U.S.C. 1386; sec. 9(b), 60 Stat. 242; 5 U.S.C. 1008)

§ 201.2 Amendments.

If, after receipt of any application, the Department asks the applicant to supply additional information, such information shall be furnished in the form of a supplement to the original application.

§ 201.3 Incorporation by reference.

Incorporation by reference shall be avoided. However, where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

§ 201.4 General provisions concerning contents.

(a) All pages of an application shall be consecutively numbered, and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

(b) All amendments to applications shall be consecutively numbered and shall comply with the requirements of this part.

(c) Requests for authority to engage in interstate and overseas air transportation shall not be included in the same application with requests for authority to engage in foreign air transportation. Similarly, requests for authority to engage in scheduled air transportation under section 401 shall not be included in the same application with requests for authority to engage in charter air transportation under section 401 or with requests for authority to engage in domestic all-cargo air transportation under section 418.

(d) Each application shall specify the type or types of service (passengers, property or mail) to be rendered and whether such services are to be rendered on scheduled or charter operations.

(e) Each application for foreign scheduled Air transportation shall include an adequate identification of each route for which a certificate is desired, including the terminal and intermediate points to be included in the certificate for which application is made.

(f) Each application shall give full and adequate information with respect to each of the relevant filing requirements set forth in part 204 of this chapter. In addition, the application may contain such other information and data as the applicant shall deem necessary or appropriate in order to acquaint the Department fully with the particular circumstances of its case; however, the statements contained in an application shall be restricted to significant and relevant facts.

§ 201.5 Advertising and sales by applicants.

(a) An applicant for new or amended certificate or commuter air carrier authority shall not:

(1) Advertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Department; or

(2) Accept payment or issue tickets for the air transportation covered by its application until the authority or amended authority has become effective or the Department issues a notice authorizing sales.

(b) An applicant for new or amended certificate or commuter air carrier authority may not advertise or publish schedule listings for the air transportation covered by its application after the application has been approved by the Department (but before all DOT/FAA authority becomes effective) unless such advertising or schedule listings prominently state:

"This service is subject to receipt of government operating authority."

Subpart 8—Certificate Terms Conditions, and Limitations

§ 201.6 Applicability.

Unless the certificate or the order authorizing its issuance shall otherwise provide, such terms, conditions and limitations as are set forth in this part, and as may from time to time be prescribed by the Department, shall apply to the exercise of the privileges granted by each certificate issued under section 401 or section 418 of the Act.

§ 201.7 General certificate conditions.

(a) It shall be a condition upon the holding of a certificate that any intentional failure by the holder to comply with any provision of title IV of the Act or any order, rule, or regulation issued thereunder or any term, condition, or limitation of such certificate shall be a failure to comply with the terms, conditions, and limitations of the certificate within the meaning of section 401(g) of the Act even though the failure to comply occurred outside the territorial limits of the United States, except to the extent that such failure shall be necessitated by an obligation, duty, or liability imposed by a foreign country.

(b) Failure to file the reports required by parts 241, 291, or 298 of this chapter shall be sufficient grounds to revoke a certificate.

(c) The authority to transport U.S. mail under a certificate is permissive, unless the Department, by order or rule, directs a carrier or class of carriers to transport mail on demand of the U.S. Postal Service; such certificate confers no right to receive subsidy, for the carriage of mail or otherwise.

(d) An all-cargo air service certificate shall confer no right to carry passengers, other than cargo attendants accompanying a shipment, or to engage in any air transportation outside the geographical scope of domestic cargo transportation. Such certificate shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(e) It shall be a condition upon the holding of a certificate that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its terms, and that the holder comply with all other requirements of part 203. OST Form 4523 may be obtained from the Office of

Aviation Analysis, Regulatory Analysis Division.

PART 202—[REMOVED]

2. Part 202 is removed.

3. Part 204 is revised to read as follows:

PART 204—DATA TO SUPPORT FITNESS DETERMINATIONS

Subpart A—General Provisions

Sec.

204.1 Purpose.

204.2 Definitions.

Subpart B—Filing Requirements

204.3 Applicants for new certificate or commuter air carrier authority.

204.4 Carriers proposing to provide essential air transportation.

204.5 Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership, or management.

204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

204.7 Revocation for dormancy.

Authority: 49 U.S.C. 1324, 1371, 1377, 1389.

Subpart A—General Provisions

§ 204.1 Purpose.

This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible point, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and filing requirements applicable to carriers that hold dormant authority.

§ 204.2 Definitions.

As used in this part:

(a) *Act* means the Federal Aviation Act of 1958, as amended.

(b) *All-cargo air carrier* or *section 418 carrier* means an air carrier holding an all-cargo air service certificate issued under section 418 of the Act to provide domestic cargo transportation. *All-cargo air service* means domestic cargo transportation performed by any air carrier holding a certificate issued under section 418 of the Act.

(c) *Certificate authority* means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 401 of the Act or a certificate to perform all-cargo air service under

section 418 of the Act. *Certificated carriers* are those that hold certificate authority.

(d) *Citizen of the United States* means:

(1) An individual who is a citizen of the United States or one of its possessions, or

(2) A partnership of which each member is such an individual, or

(3) A corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds of the board of directors and other managing officers are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(e) *Commuter air carrier* means an air carrier holding or seeking authority under part 298 of this chapter that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(f) *Domestic cargo transportation* means the carriage by aircraft in interstate or overseas air transportation of property or mail, or both.

(g) *Eligible point* is one that was on a certificated carrier's authorized route as of October 24, 1978 (Type A point), or was deleted from a certificate between July 1, 1968, and October 24, 1978, and has been designated as "eligible" (Type B point).

(h) *Essential air transportation* is that transportation which the Department has found to be essential under section 419 of the Act.

(i) *FAA* means the Federal Aviation Administration, U.S. Department of Transportation.

(j) *Fit* means fit, willing and able to perform the air transportation in question properly and to conform to the provisions of the Act and the rules, regulations and requirements issued under the Act.

(k) *Key personnel* include the directors, president, all vice presidents, the directors or supervisors of operations, maintenance, and finance, and the chief pilot of the applicant or air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.

(l) *Normalized operations* are those which are relatively free of start-up costs and temporary barriers to full-

scale operations posed by the carrier's limited experience.

(m) *Relevant corporations* are the applicant or air carrier, any subsidiary thereof, any predecessor thereof (*i.e.*, any air carrier in which any directors, principal officers or persons having a substantial interest have or once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant or air carrier. The latter includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or air carrier; and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier and which has significant influence over the applicant or air carrier as indicated by 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies.

(n) *Substantial change in operations, ownership, or management* includes, but is not limited to, the following events:

(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations;

(2) A petition for protection from creditors under the federal bankruptcy laws or a filing of a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

(3) The acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and

(4) A change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

(o) *Substantial interest* means beneficial control of 10 percent or more of the outstanding voting stock.

Subpart B—Filing Requirements

§ 204.3 Applicants for new certificate or commuter air carrier authority.

An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall

file the data set forth in this section. However, if the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and those data continue to reflect the current state of the carrier's fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Department's staff to ascertain what data required by this section are already available to the Department and need not be included in the filing.

Note: If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with § 241.22(g).

The Department may require a carrier to provide additional data if necessary to reach an informed judgment about its fitness.

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant's organization.

(c) The State law(s) under which the applicant is organized.

(d) If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agent of the State in which the applicant is incorporated, certifying that the applicant corporation is in good standing.

(e) A sworn affidavit stating that the applicant is a citizen of the United States.

(f) The identity of the key personnel who would be employed by the applicant, including:

(1) Their names and addresses;

(2) The experience, expertise, and responsibilities of each;

(3) The number of shares of the applicant's voting stock held by each and the percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(4) The citizenship of each; and

(5) A description of the officerships, directorships, shares of stock (if 10 percent or more of total voting stock outstanding), and other interests each holds or has held in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or

person substantially engaged in the business of aeronautics.

(g) A list of all persons having a substantial interest in the applicant. Such list shall include:

(1) Each person's name, address and citizenship;

(2) The number of shares of the applicant's voting stock held by each such person and the corresponding percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and

(4) If any person or subsidiary of a person having a substantial interest in the applicant is or has ever been

(i) an air carrier, a foreign air carrier, a common carrier, or

(ii) substantially engaged in the business of aeronautics, or

(iii) an officer or director of any such entity, or

(iv) a holder of 10 percent or more of total outstanding voting stock of any such entity, the list shall describe such relationship(s).

(h) A list of the applicant's subsidiaries, if any, including a description of each subsidiary's principal business and relationship to the applicant.

(i) A list of the applicant's shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(j) To the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide:

(1) Copies of the 10K Annual Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission, and

(2) Copies of recently filed 10Q Quarterly Reports, as necessary, in order to show the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application.

(k) If 10K Reports are not filed with the Securities and Exchange Commission, the following, for the 3 most recent calendar or fiscal years, reflecting the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application:

(1) The Balance Sheet of each relevant corporation;

(2) The Income Statement of each relevant corporation;

(3) All footnotes applicable to the financial statements, including:

(i) A statement as to whether the documents were prepared in accordance with Generally Accepted Accounting Principles, and

(ii) A description of the significant accounting policies of each relevant corporation, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization;

(4) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(5) A statement identifying the person who has prepared the financial statements, his or her accounting qualifications, and any affiliation he or she has with the applicant;

(l) A list of all actions and outstanding judgments for more than \$5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, including the amount of each judgment, the party to whom it is payable, and how long it has been outstanding.

(m) The number of actions and outstanding judgments of less than \$5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, and the total amount owed by each on such judgments.

(n) A description of the applicant's fleet of aircraft, including:

(1) The number of each type of aircraft owned, leased and to be purchased or leased;

(2) Applicant's plans, including financing plans, for the purchase or lease of additional aircraft; and

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.

(o) A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Act or orders, rules, regulations, or requirements issued pursuant to the Act, and any corrective

actions taken. (If an applicant has a compliance history that warrants it, additional information may be required.)

(p) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or member of the key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(q) A description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board Regulations, 49 CFR 830.2) experienced by the applicant, its personnel, or any relevant corporation, which occurred either during the year preceding the date of application or at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself, including:

(1) The date of the occurrence;

(2) The type of flight;

(3) The number of passengers and crew on board and an enumeration of any injuries or fatalities;

(4) A description of any damage to the aircraft;

(5) The FAA and NTSB file numbers and the status of the investigations, including any enforcement actions initiated against the carrier or any of its personnel; and

(6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)

(r) A brief narrative history of the applicant.

(s) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations, and the identity of the local FAA office and personnel responsible for processing an application for any additional FAA authority needed to conduct the proposed operations.

(t) A description of the service to be operated if the application is granted, including:

(1) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated, along with the assumptions underlying the accounts and amounts shown; and

(2) A forecast Income Statement, broken down by quarters, for the first year ending after the initially proposed operations are normalized, and an itemization of all pre-operating and startup costs associated with the initiation of the proposed service. Such

Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators), number of passengers and number of tons of mail and cargo to be carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include a statement as to whether the statements were prepared on the accrual or cash basis, an explanation of how the estimated costs and revenues were developed, a description of the manner in which costs and revenues are allocated, how the underlying traffic forecasts were made, and what load factor has been assumed for the average and peak month. Pre-operating and start-up costs should include, but are not limited to, the following: Obtaining necessary government approval; establishing stations; introductory advertising; aircraft, equipment and space facility deposits and rent; training; and salaries earned prior to start-up.

(u) A signed counterpart of Agreement 18900 (OST Form 4523) as required by part 203 of this chapter.

(v) The following certification, which shall accompany the application and all subsequent written submissions filed by the applicant in connection with its application:

Pursuant to title 18 United States Code 1001, I [the individual signing the application], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. 1001 shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

§ 204.4 Carriers proposing to provide essential air transportation.

Applicants proposing to provide essential air transportation have been divided into two categories, and are subject to differing data submission requirements as set forth in paragraphs (a) and (b) of this section. However, if a carrier has previously filed any of the required data with the Department or other Federal agency and they are available to the Department, and these data continue to reflect the current state of the carrier's fitness, the carrier may instead identify the data and provide a citation for the date and place of filing. All carriers may contact the Department to ascertain what information is already

available to the Department and thus may not need to be resubmitted.

(a) Carriers who propose to begin or expand non-subsidized essential air service when the incumbent leaves the market must file the following information:

(1) All of the information required under § 204.3 of this part.

(2) A description of the back-up aircraft available to the applicant, including:

(i) The number of each type of such aircraft;

(ii) The conditions under which such aircraft will be available to the carrier;

(iii) The carrier's plans for financing the acquisition or lease of such additional aircraft; and

(iv) A sworn affidavit stating that all such aircraft have been certified by the FAA and currently comply with all FAA safety standards.

(3) A description of the fuel available to perform the proposed essential air services and the carrier's contracts with fuel suppliers.

(4) The carrier's systemwide on-time and completion record for the preceding year and, if applicable, in the subject market(s).

(5) A list of the markets the carrier serves and the number of weekly round trips it provides in each.

(6) A description of the average number of block hours each type of aircraft is currently flown per day.

(7) An estimate of the impact the proposed essential air service would have on the carrier's utilization of its aircraft fleet.

(8) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight, and the fares to be charged.

(9) A pro-forma income statement for the proposed operation for the first annual period.

(b) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:

(1) All of the information required under § 204.3 of this part.

(2) All of the information required under paragraph (a) of this section.

(3) A forecast Income Statement covering the operations conducted in essential air service for the first year following the initiation of the proposed essential services. Such statement shall include:

(i) Subsidy needed;

(ii) Estimated block hours and revenue miles by type of aircraft;

(iii) Total projected revenue including volumes of passengers and freight by essential air service market and the associated fares and rates;

(iv) An explanation of the derivation of estimates of operating expenses; and

(v) A description of the manner in which costs and revenues are allocated.

(4) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

§ 204.5 Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership, or management.

(a) A certificated or commuter air carrier proposing a substantial change in operations, ownership or management shall file the data set forth in § 204.3. These data must be submitted in cases where:

(1) The proposed change requires new or amended authority, and

(2) Although the carrier's existing certificate or commuter authority is adequate for the performance of its planned services, the change substantially alters the factors upon which its latest fitness finding is based.

Information which a carrier has previously formally filed with the Department, or with another Federal agency where they are available to the Department, which continues to reflect the current state of the carrier's fitness may be omitted. The carrier instead should identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the carrier may contact the Department (Air Carrier Fitness Division) to ascertain what data required by this section, if any, are already available to the Department or are not applicable to the substantial change in question and need not be included in the filing.

(b) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, ownership or management shall be addressed to the Chief, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

§ 204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

Carriers proposing to make a change which would not substantially affect

their operations, management, or ownership, such as certificated carriers applying for additional authority which would not substantially change their operations, will be presumed to be fit and need not file any information relating to their fitness at time of the change. However, if the Department concludes, from its own analysis or based on information submitted by third parties, that such change may bring the carrier's fitness into question, the Department may require the applicant carrier to file additional information.

§ 204.7 Revocation for dormancy.

(a) An air carrier that has not commenced any type of air transportation operations for which it was found fit, willing, and able within one year of the date of that finding, or an air carrier that, for any period of one year after the date of such a finding, has not provided any type of air transportation for which that kind of finding is required, is deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked.

(b) An air carrier found fit which commences operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all of the data required by § 204.3 at least 45 days before it intends to provide any such air transportation. Such filings shall be addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in fitness data previously formally filed with the Department, the carrier shall file a statement to that effect signed by one of its officers. The carrier may contact the Department (Air Carrier Fitness Division) to ascertain which data are already available to the Department and need not be refiled. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department decides that the carrier continues to be fit, willing, and able to perform such air transportation. During the pendency of the Department's consideration of a data submission under this paragraph, the expiration period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date of that decision or finding shall be the date

considered in applying paragraph (a) of this section.

(c) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, the date of such letter.

(d) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

PART 291—DOMESTIC CARGO TRANSPORTATION

4. The authority citation for part 291 continues to read as follows:

Authority: Secs. 101, 102, 204, 401, 407, 408, 416, 418, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 766, 767; 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388.

5. Subpart B of part 291 would be revised to read as follows:

Subpart B—All-Cargo Air Service Certificates

Sec.
291.10 Applications.

Subpart B—All-Cargo Air Service Certificates

§ 291.10 Applications.

Applications for all-cargo air service certificates shall comply with the provisions of part 201 and subpart Q of part 302 of this chapter with regard to filing procedures, and with the provisions of part 204 of this chapter with regard to evidentiary requirements.

6. Subparts C, D, E, and F would be amended as follows:

§§ 291.20, 291.23, 291.24, 291.34, 291.50 [Amended]

(a) In §§ 291.20, 291.23(b), 291.24, 291.34, and 291.50, remove the word "Board" and add, in its place, the word "Department".

291.42 [Amended]

(b) In § 291.42(a)(2), remove the words "Office of the Comptroller, Information Management Division, B-46a, Civil Aeronautics Board, Washington, DC 20428" and add, in their place, the words "Data Administration Division, DAI-20, room 4125, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001".

PART 302—[AMENDED]

7. The authority citation for part 302 continues to read as follows:

Authority: Secs. 101, 203, 204, 401, 402, 403, 404, 406, 412, 418, 901, 1001, 1002, 1005, Pub. L. 85-726, as amended, 72 Stat. 737, 742, 743, 754, 757, 758, 760, 763, 770, 783, 788, 794, 49 U.S.C. 1301, 1323, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; E.O. 11514, Pub. L. 91-90 (42 U.S.C. 4321); 84 Stat. 772, 39 U.S.C. 5402, unless otherwise noted; 49 U.S.C. Subtitle I; Administrative Procedure Act (5 U.S.C. 551 et seq.).

8. In § 302.1701 of subpart Q, paragraph (d) would be added to read as follows:

§ 302.1701 Applicability.

* * * * *

(d) Applications for all-cargo air service certificates, and renewals, alterations, amendments, modifications, suspensions, and transfers of such certificates under section 418 of the Act.

Issued in Washington, DC, on June 7, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-14147 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-939-86]

RIN 1545-AJ70

Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: This document contains corrections to proposed income tax regulations relating to the definition and computation of the insurance income of a controlled foreign corporation.

FOR FURTHER INFORMATION CONTACT: David R. Cooper at 202-566-6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains corrections to proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 953, 954, 964, 1248, and 6046 of the Internal Revenue Code of 1986.

Need for Correction

As published, the proposed regulations contain errors which may

prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on April 17, 1991, of the proposed rulemaking, which was the subject of FR Doc. 91-8694, is corrected as follows:

Paragraph 1. On page 15540, third line down from the top of the second column, the language "26 CFR Parts 1 and 602" should be corrected to read "26 CFR Part 1".

§ 1.953-3 [Corrected]

Par. 2. On page 15552, in the third column, in § 1.953-3, line 10 of paragraph (a), the language "recharacterized premiums even though" is corrected to read "recharacterized as non RPII premiums even though".

§ 1.953-4 [Corrected]

Par. 3. On page 15555, in the third column, in § 1.953-4, line 8 of *Example 1* of paragraph (a)(2)(ii), the language "under § 1.953-5(c)(3)(iii)(A), is appropriated" is corrected to read "under § 1.953-5(c)(3)(iii)(A), is apportioned".

§ 1.953-5 [Corrected]

Par. 4. On page 15557, in the second column, in § 1.953-5, in the first line of paragraph (b)(2)(ii)(B)(3), the word "decrease" is corrected to read "increase".

§ 1.953-6 [Corrected]

Par. 5. On page 15562, in the second column, § 1.953-6, the eleventh line of paragraph (g)(1)(i), the language "to income that is not insurance under" is corrected to read "to income that is not insurance income under".

Par. 6. On page 15563, in the third column, in § 1.953-6, in paragraph (h)(4) *Example 3* (i), a new line containing the language "Pro rata amount" is added immediately following the line "Lesser of:".

Par. 7. On page 15563, in the third column, in § 1.953-6, in the eighth line of the flush material following paragraph (h)(4) *Example 3* (iii), the language "pro rata income of \$875) and subpart F" is corrected to read "pro rata amount of \$875) and subpart F".

Par. 8. On page 15563, in the third column, in § 1.953-6, in the tenth line of paragraph (h)(5)(i), the language "which the foreign corporation, computed" is corrected to read "which the foreign corporation was a controlled foreign corporation, computed".

Par. 9. On page 15564, in the first column, § 1.953-6, in lines fourteen through sixteen of the *Example* in paragraph (h)(6)(ii), the language "\$1,000

is related person insurance income of which \$1,000 is related person insurance income. X also had earnings and profits for the" is corrected to read "\$1,000 is related person insurance income. X also had earnings and profits for the".

Par. 10. On page 15564, in the second column, in § 1.953-6, the word "or" should be added as a new line immediately following the fourth line of the *Example* (ii) in paragraph (h)(6)(ii).

§ 1.953-7 [Corrected]

Par. 11. On page 15565, in the first column, in § 1.953-7, the twentieth line of *Example 1* of paragraph (a)(2), the language "(25% × 50X). The insurance income" is corrected to read "(25% × 60%). The insurance income".

Par. 12. On page 15566, in the first column, in § 1.953-7, the section heading immediately following *Example 2* which reads "(2) *Election to treat income as effectively connected—*" is corrected to read "(c) *Election to treat income as effectively connected—*".

§ 1.6046-1 [Corrected]

Par. 13. On page 15570, in the first column, in § 1.6046-1, the sixth line of paragraph (a)(2)(a) which reads "on January 1, 1963, if on that date he".

PART 602—[Corrected]

Par. 14. On page 15570, in the second column, the heading "**PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT**" and instructional paragraphs 9 and 10 are removed.

Par. 15. On page 15570, in the second column, at the end of the document, the following name and title of the official signing the document should have appeared as follows:

"Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue".

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-14163 Filed 6-14-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Regulatory Program; Regulatory Reform Review III and Incidental Coal Extraction Exemption

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior

ACTION: Proposed Rule; reopening; correction.

SUMMARY: OSM is correcting an error on the proposed rule reopening and extending the comment period on a proposed amendment to the Virginia permanent program which was published on May 23, 1991 (56 FR 23664-23666). The correction will revise the subject of the proposed rule.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert A. Penn, Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION: The following correction is made to Virginia Regulatory Program amendment reopening which was published on Thursday, May 23, 1991 (56 FR 23664-23666): on page 23664, the subject of the proposed rule is changed from Virginia Regulatory Program; Coal Surface Mining Reclamation Fund to Virginia Regulatory Program; Regulatory Reform Review III and Incidental Coal Extraction Exemption.

Dated: June 6, 1991.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 91-14248 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-91-43]

Drawbridge Operating Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This proposed amendment would revoke the regulations for the Sunrise Boulevard (SR 838) drawbridge, mile 1062.6, at Fort Lauderdale because the low-level drawbridge that warranted the existing special regulations has been replaced by a higher and wider bascule bridge providing improved highway traffic flow and less drawbridge openings required by vessels. This proposal is being made to ease the burden on navigation since special operating restrictions are no longer needed to accommodate the needs of vehicular traffic.

DATES: Comments must be received on or before August 1, 1991.

ADDRESSES: Comments regarding this proposed change should be mailed to Commander (oan), Seventh Coast Guard District, 909 Southeast 1st Avenue, Miami, FL 33131-3050. Any comments received will be available for inspection and copying at Brickell Plaza Federal Building, room 406, 909 Southeast 1st Avenue, Miami, FL. Documents and comments concerning this regulation may be inspected Monday through Friday between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Brodie Rich, (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Interested parties submitting written views, comments, data, or arguments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Brodie Rich, project officer, and Lt. Genelle Tanos, project attorney.

Discussion of Proposed Regulations

The Sunrise Boulevard drawbridge presently opens on the quarter-hour and three quarter hour from 7:15 a.m. to 6:15 p.m. from November 15 through May 15. This amendment revokes the regulations that are no longer needed since the new drawbridge opened for service on August 13, 1989. The new high-level drawbridge replacement was permitted by the Coast Guard with the understanding that the existing special operating regulations would be revoked once the new bridge was completed.

Economic Assessment and Certification

This action is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. This action will not have a significant economic impact on a substantial number of small entities. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, the Coast Guard proposes to amend part 117 to title 33, Code of Federal Regulations, the read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

§ 117.261 [Amended]

2. In § 117.261 paragraph (gg) is removed and reserved.

Dated: May 30, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91-14192 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 205

RIN: 0970-AA82

Aid to Families with Dependent Children and Adult Public Assistance; Revised Quality Control System

AGENCY: Family Support Administration (FSA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would establish a revised quality control system for the Aid to Families with Dependent Children (AFDC) and the Adult assistance programs beginning in fiscal year 1991. Under the new system, (1) Disallowances in AFDC matching funds (Federal financial participation) would be imposed on those States whose assistance payment error rates are above the national average; (2) both overpayments and underpayments made to AFDC recipients would be taken into account; (3) there would be incentives for States to improve their overpayment recoveries and their child support collections; (4) there would be a

Departmental Quality Control Review Panel to provide a review of differences between State and Federal AFDC review findings; (5) the Departmental Appeals Board would review all other quality control disallowance issues in dispute between the States and Federal government; and (6) some of the policies and procedures contained in sections 2 and 3 of the Department's Quality Control (QC) Manual would be incorporated.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than August 16, 1991.

ADDRESSES: Comments should be submitted in writing to the Assistant Secretary for Family Support, Attention: Mr. Sean Hurley, Director, Division of Quality Control, Office of Family Assistance, room 559a, 370 L'Enfant Promenade, SW., Washington, DC 20447, or delivered to the Office of Family Assistance between 8:00 a.m. and 4:30 p.m. during regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Hurley, Office of Family Assistance, Division of Quality Control, room 559a, 370 L'Enfant Promenade, SW., Washington, DC 20447 telephone (202) 401-9296.

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking (NPRM) would provide rules governing the revised Quality Control (QC) System for the Aid to Families with Dependent Children (AFDC) program established by section 408 of the Social Security Act, as added by section 8004 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239), as well as revised program rules governing quality control for the Adult assistance programs. The QC system is the major management tool for measuring the accuracy of payments and the level of Federal funding under the AFDC and Adult assistance programs, and for obtaining the data needed to analyze and improve performance in paying benefits. These two objectives are accomplished by a continuous review of statistically valid and reliable State samples of AFDC and Adult assistance cases and Federal samples of AFDC assistance cases. To the extent that Medicaid eligibility is based on AFDC eligibility, these regulations also affect the Medicaid program.

Under the current AFDC regulations, all States are subject to a reduction of

Federal financial participation (FFP) for incorrect payments that exceed the national error rate tolerance of 3 percent (4 percent for Guam, Puerto Rico, and the Virgin Islands) based on the QC sample data during an annual review period of October 1 through September 30. If a State fails to meet the prescribed error rate tolerance, it is subject to a loss in FFP unless it can demonstrate it made a good faith effort to comply.

Following the legislative mandate in section 408(h) of the Social Security Act, we have consulted with representatives of the National Governors' Association, the American Public Welfare Association and the States in developing the regulations in the following areas: Sampling methodology; sample size and selection procedures; time frames for sample completion and reporting of QC data; resolution of differences between State and Federal review findings; notification of error rates; and disallowances.

We have also included in the proposed regulations certain basic procedures currently contained in the QC Manual which were previously incorporated only by reference in the regulations. (The QC Manual is intended to contain operating instructions and procedures implementing the Federal policy set forth in the regulations. Thus, for example, the policy of requiring minimum verification and documentation standards for each element of eligibility and payment amount is included in the proposed regulations at § 205.42(c)(2). However, implementing specific verification and documentation requirements are set forth in the QC Manual.)

Further, we have also included in the proposed regulations, the existing regulatory requirements for the review of: (1) AFDC negative case actions in the States and in Guam, Puerto Rico, and the Virgin Islands, and (2) active cases and negative case actions of the Adult assistance programs in Guam, Puerto Rico, and the Virgin Islands, under titles I, X, XIV, and XVI (AABD) of the Social Security Act. While section 408 does not require a change in the policies governing negative case actions and the Adult assistance programs, we are changing these policies, where appropriate, to be consistent with the AFDC active case requirements. However, section 408 requires the Department to conduct a study of the AFDC negative case action system and make recommendations to Congress on the future design and use of the negative case action QC system by October 1, 1992.

The Adult assistance programs exist only in Guam, Puerto Rico, and the Virgin Islands. The Department's authority for requiring a QC system in these programs derives from the requirement that Federal matching funds be provided for proper assistance payments (sections 3, 1003, 1403, and 1603 of the Social Security Act) and from the authority in section 1102 of the Act to issue rules for proper and efficient administration. However, for the purpose of uniformity and consistency, we are proposing to apply, except as indicated, the same sampling and review requirements contained in §§ 205.40, 205.41, and 205.42 (a) through (f) to both the AFDC and the Adult assistance programs. Sections 205.42 (g), (h), (i) and 205.43 do not apply to the Adult assistance programs since the Federal rereview and the calculation of the regressed error rates for these programs are not utilized.

We are proposing to revise §§ 205.40, 205.42 and 205.43, add § 205.41, and remove and reserve § 205.44.

Major Provisions of the Statute

The Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), which became law on December 19, 1989, provides for a revised QC system for AFDC beginning in fiscal year 1991. While Congress made changes from the current to the revised QC system in the error rate tolerance and method for calculating disallowances, the basic design and features of the system remain unchanged. The major provisions of the legislation include:

1. Waiver of all pending or potential QC disallowances for fiscal years 1981 through 1990, estimated at \$2.4 billion;
2. Establishment of a new error rate tolerance set at the national average error rate each year, or at 4 percent, whichever is higher;
3. Exclusion of certain types of errors in computing a State's payment error rate;
4. Calculation of disallowances based on a sliding scale which reflect the degree to which a State's error rate exceeds the national average;
5. Adjustment of disallowances based on good performance in achieving other program goals (i.e., low underpayment rate relative to the national underpayment rate, child support collections and overpayment recoveries); and
6. Establishment of a Departmental QC Review Panel to review differences between State and Federal QC findings.

Discussion of the Proposed Regulations

The discussion of the proposed rules is divided into four parts. The first

addresses sampling issues; the second discusses all issues involving the QC review; the third describes the error rate and disallowance calculations and notification procedures; and the fourth discusses data management.

Sampling Issues

Sampling Plan Requirements and Submittal Dates

The proposed regulations at § 205.41(d) specify the content of the State QC sampling plan. However, except as noted below under "Sampling methodology," this does not represent a change in sample plan requirements from those applicable to the current QC system as set forth in the QC Manual, section 2 (Sampling and Statistical Methods), which is applicable to both the AFDC and Adult assistance programs. The plan must be in effect for the entire annual sample period and must include the population to be sampled, a description of the lists from which the sample is selected, the sample size, the sample selection procedure, the option to drop or complete cases for which a review was completed within the last six months, and the procedure to correct for oversampling or undersampling.

The proposed regulations at § 205.41(c) would require States to submit a reliability waiver statement (for active AFDC only), by the first day of the annual sample period. This is a change from 60 calendar days prior to the selection of the October sample, as set forth in the QC Manual.

We have also incorporated in these proposed rules submittal dates for universe estimates, sample intervals, monthly lists of selected sample cases, computer-generated random start numbers and seed numbers, and reserve pool cases (if applicable). The proposed rules would require the universe estimates and sample intervals to be submitted within 30 calendar days prior to the selection of the October sample and the remaining information to be submitted within 10 calendar days of the sample selection date specified in the State's approved sampling plan. Although these time frames do not represent a change to current procedure as set forth in the QC Manual, we have explicitly incorporated these requirements in the regulations as required by section 408(h) of the Social Security Act.

Sample Selection

In order to ensure (1) that all cases, including cases added to the rolls during the review month are subject to sampling, and (2) that all payments,

including adjustments to sample cases, are included in the QC review, we had considered changing our policy to require that sample selection would be made after the end of the review month. Under current policy, States are required to select their review month samples from lists of active cases with payments authorized prior to sample selection and paid by the end of the review month. States are permitted to use regular first-of-the-month payroll listings as the frame for selection of sample cases, extend that frame at the end of the review month, and continue sampling all the cases added to the AFDC rolls during the review month that were not on the regular payroll listing. In recent years, however, an increasing number of cases have received payments and payment adjustments during the review month but after the sample has been selected. These added cases and payment adjustments are not being included in the QC review process.

Although more than half of the States are either sampling at the end of, or after, the sample month, we are not making any change to the current policy at this time for two reasons. First, some States integrate their AFDC samples with the Food Stamp and/or Medicaid QC samples which permit sampling at the beginning of the sample month, and second, we are proposing in § 205.42(e) to reduce the sample disposition and data submission time frames which are measured from the end of the sample month. However, we plan to continue studying this policy to ensure the validity of the sample and invite comments on this issue to assist us in formulating policy.

Sample size

As requested by the State representatives, the NPRM at § 205.41(d)(3) retains the current active AFDC and Adult assistance sample sizes specified in QC Manual, sections 2 and 3, with an option for States to reduce their standard sample size. States may not reduce their standard sample sizes below the minimum sizes specified in the QC Manual. The regulations would also retain the requirement that a State provide the Department with a reliability waiver statement as an addendum to its sampling plan, if the State elects the option to reduce its sample for completed AFDC active case reviews below the standard size. When a State opts for a reduced AFDC active sample, the reliability waiver statement ensures that the risk of reduced precision in the error rate estimate will be shared by the State and Federal government.

The negative case action sample size requirements are the same for both the AFDC and the Adult assistance programs. Before October 1990, larger AFDC negative case action samples were required for Guam, Puerto Rico, and the Virgin Islands in order to have adequate data to make six-month incentive payment determinations under section 403(j) of the Social Security Act. Since section 408(b) repealed section 403(j), effective October 1, 1990, we have reduced the AFDC negative case action sample requirement for Guam, Puerto Rico, and the Virgin Islands. However, the proposed regulations retain the current negative case action sample requirements in the Adult assistance programs for Guam, Puerto Rico, and the Virgin Islands.

We believe these sample sizes are sufficient to provide both valid and reliable estimates of States' error rates and adequate information for States to identify problem areas for corrective action purposes. For purposes of uniformity and consistency, the sample sizes are included in the proposed regulations for AFDC and the Adult assistance programs, although the statute requires the Department to regulate in this area only for the AFDC program.

Sampling Methodology

Under § 205.41(d)(4) of the proposed regulations, States would select their samples using the systematic random sampling method. This has always been the preferred method for selection of the State samples. The method conforms to principles of probability sampling, is easily implemented, and can easily be duplicated to provide Federal oversight with an audit trail. Currently, 48 States are using this method. States may continue to stratify their samples in accordance with procedures specified in the QC Manual, section 2, and may continue to integrate their AFDC active case samples with Food Stamps and Medicaid QC samples.

QC Review Issues

Treatment of State Plan Provisions

The QC review is conducted against the substantive conditions of eligibility and amount of assistance payment provisions as reflected in State operating policies that are consistent with the State plan. The State plan is a statement of the conditions to which a State commits itself in the operation of its program. Since 1982, for AFDC, States have utilized the State plan preprint, entitled "Streamlined State Plan For Title IV-A of the Social Security Act: Financial Assistance Aid

to Families with Dependent Children", as the vehicle for submitting State plans and State plan amendments. For the Adult assistance programs, Guam, Puerto Rico, and the Virgin Islands use non-streamlined operational "State" plans. To receive Federal matching funds, each State agrees to administer its AFDC program "in accordance with title IV-A of the Act" and "all other applicable Federal laws and regulations * * *". Under current regulations at § 205.40, if an approved State plan provision, or a pending plan amendment submitted to but not acted upon by the Department, is determined to be inconsistent with Federal law or regulations, the QC review is conducted against the provision in the existing State plan until a revised plan amendment is submitted or the pending plan amendment is finally disapproved. Under these circumstances, a State could avoid QC errors by simply not submitting a plan amendment that adheres to the statute or regulations.

Section 408(c)(2)(A) addresses this problem. It generally provides that, if an approved State plan provision is determined to be inconsistent with Federal law or regulation, and the State has been notified of the inconsistency, the QC review will be governed by the provision of Federal law or regulation. We recognize that a State will need some lead time after notification of a plan inconsistency to submit an amendment to the State plan and revise its operating procedures. We are, therefore, proposing in § 205.42(b)(1)(i) to provide States with a period of 60 calendar days after receipt of notification of the inconsistency to submit an amendment to the State plan removing the inconsistency. Unless an amendment has been submitted, sample cases selected for the review month after the 60-day period will be reviewed against applicable Federal law and regulations. We believe that this time period is consistent with the intent of the notification process in the statute. If an amendment is submitted timely, we will review against its provisions until disapproval by the Department becomes final. Once disapproval by the Department becomes final, we will begin reviewing against applicable provisions of Federal law and regulations with sample cases selected for the review month immediately following the date that disapproval becomes final. The review will continue on this basis until the State has received approval of a plan amendment. We believe it is reasonable to conduct the review against the provisions of applicable Federal law and regulations,

once a State plan amendment designed to remove an inconsistency has been submitted and disapproved. Otherwise, it is possible that a series of unapprovable plan amendments may be submitted, thus effectively forestalling implementation of the applicable Federal law and regulations.

Section 408(c)(2)(A) is silent on the appropriate treatment of a pending plan amendment which is inconsistent with Federal law or regulations. If a State implements a plan amendment submitted to but not acted upon by the Department, the QC review will continue to be conducted against the pending plan amendment until final disapproval by the Department. Once the plan amendment is finally disapproved, sample cases selected for the review month immediately following the date that disapproval becomes final will be reviewed against the existing approved plan, if the plan is consistent with Federal law and regulations. Where the approved plan is inconsistent with Federal law and regulations, we will begin reviewing against Federal law and regulations until the date of approval of a revised plan amendment. Since a State would have had advance notice of the inconsistency during the disapproval process, we believe that additional notification would not be necessary.

Section 408(c)(2)(B)(i) requires the Secretary to grant a State a reasonable time period to make the State plan consistent with Federal law and regulations if it is necessary for the State to enact a new law. As indicated in the proposed regulations at § 205.42(b)(1)(iii), if a new law needs to be enacted, the State shall immediately, after receipt of notification of the inconsistency between the State plan and Federal law and regulations, advise the Department. We are not proposing a specific time period for requiring the State to enact new laws and amend its State plan. Since we anticipate these would be unique in nature and infrequent in occurrence, time frames for their resolution should be addressed on a case-by-case basis by the Department.

We believe these time frames afford the States a reasonable time period to change identified inconsistencies in their State plans and, thus, conforms to the intent of Congress that the QC reviews be conducted against the substantive conditions of eligibility and amount of payment.

Treatment of Court Orders

Section 408(c)(2)(B)(ii) provides that, for error rate determination purposes, the QC review will be conducted in

accordance with the applicable court orders. Therefore, a QC sample case paid in compliance with a court order issued by a Federal, State or local court will be considered correctly paid if all other eligibility and payment conditions not affected by the court order are met. The proposed QC regulation reflects this review criterion at § 205.42(b)(2).

Current regulations at § 205.10(b)(3) provide that Federal matching is available for "Payments of assistance within the scope of the Federally aided public assistance programs made in accordance with a court order." Since the QC system is the legislatively prescribed vehicle for assessing disallowances of assistance payments under the AFDC program, Federal matching is available for all payments to AFDC assistance units subject to QC sampling, made in accordance with a court order without regard to the "scope" of program limitation noted above.

We are not, however, proposing to amend § 205.10(b)(3). The regulations at § 205.10(b)(3) continue to be applicable since court order matching specifications still apply to AFDC assistance units not included in the QC sample universe (e.g., emergency assistance and presumptive eligibility).

While QC will review to the conditions of all court orders under the proposed regulations, it continues to be important for States to defend against any legal challenge to Federal AFDC law, regulation or policy. In order to assist the States in meeting these legal challenges, it is essential that the Department is immediately advised when law suits that challenge substantive Federal AFDC eligibility and payment rules are filed against the State, or its political subdivisions. This is especially true when the law suit affects payments of assistance units subject to QC sampling.

Treatment of Changes in Federal Law

Section 408(c)(3)(A) provides for excluding QC payment errors resulting solely from a State's failure to properly implement changes in Federal statute within six months after the effective date of the changes or the issuance of final regulations, where such regulations are necessary to construe or apply the Federal statutory changes, whichever is later. This means, for example, that if statutory changes are effective as of October 1 of a given year and that necessary final (or interim final) regulations are issued on January 1 of the following year, a State will have until July 1 of that year to implement such changes before any payment error resulting solely from such changes will

be counted in the computation of a State error rate. The QC review will be conducted in accordance with permissible State practice after the end of the six-month period, i.e., July 1 in our example. We plan to notify the States when the six-month procedures will apply. Although payment errors will not be counted in the error rate computation during the six-month period, we plan to collect this information for management purposes. Proposed regulations are set forth at § 205.42(d)(2)(i).

Detrimental Reliance

Sections 408(c)(3) (B) and (C) provide for excluding from consideration as an erroneous payment, a payment that is in error solely by reason of "the State's reliance upon and correct use of erroneous information provided by the Secretary about matters of fact" and a payment that is in error solely by reason of "the State's reliance upon and correct use of written statements of Federal policy provided to the State by the Secretary." The proposed regulations at § 205.42(d)(2)(ii), therefore, specify that an assistance payment made by a State shall not be considered an erroneous payment if the payment is in error solely because of the State's reliance upon and correct use of incorrect factual information or incorrect written policy statements provided by the Department.

"Reliance upon and correct use of incorrect factual information" in the proposed rules means that the State depended on the written factual information to make payment decisions, had reasonable expectation that the information was timely and accurate, and followed procedures for access and use of the information. State exemption from a payment error as a result of incorrect factual information will be made on a case-by-case basis. For example, the Department supplies States with Social Security benefit information via the Beneficiary and Earnings Data Exchange system (BENDEX). In order to get appropriate information from BENDEX, it is necessary for a State to provide specific information about potential beneficiaries. Failure to do so can result in incorrect information being supplied to the State. In this instance, the State would have failed to follow procedures for access to BENDEX data. The resulting error would not be excluded from the error rate.

"Incorrect written statements of Federal policy by Department officials" in the proposed rules means written policy from a Federal official in the Department responsible for dissemination of such policy in the AFDC program (i.e., from the Assistant Secretary for Family Support, a FSA

Regional Administrator, or the Director of the Office of Family Assistance). This provision applies to situations where the State's eligibility and payment policy correctly reflects the policy directive provided by the Department official, but the directive is subsequently determined to be incorrect. A change in circumstances (i.e., a change that may affect the eligibility and payment amount of the assistance unit) would occur on the date that the Assistant Secretary for Family Support, a FSA Regional Administrator, or the Director of the Office of Family Assistance notifies the State of the correct policy or, if applicable, the effective date. Payment errors will be cited beginning with the second month following the month of notification or, if applicable, with the effective date pursuant to § 205.42(d)(1) as a change in circumstances.

Declaration of State of Emergency or Disaster

Section 408(c)(3)(D) provides that an assistance payment issued by a State shall not be considered an erroneous payment if the payment is in error solely because of the occurrence of an event in the State that results in a declaration of a state of emergency or major disaster by the President or the Governor of the State. The state of emergency or major disaster must be declared pursuant to Federal or State statute and the event must directly affect the State's ability to make correct payments. The proposed regulations would add this as one of the types of payment errors which will not be counted in the determination of a State's error rate.

We have specified in the proposed regulations at § 205.42(d)(2)(iii) that the State must provide adequate documentation of the event and its impact on the State's eligibility and payment determination process for consideration by the Department. Request for error exclusion under this provision must be submitted in writing to the Department as soon as possible after a state of emergency or disaster is declared. The request must include: A copy of the declaration; a detailed explanation of the circumstances; identification of the affected jurisdictions; the reason(s) why the State's ability to make correct payments has been or will be impaired; the length of time required to overcome the effects of the emergency or disaster; and the actions the State is taking to minimize the magnitude and duration of the negative effect. The Department will consider the appropriateness of each request and notify the State accordingly. The State will be required to continue to

cite errors in accordance with permissible State practice until a decision on its request has been made. If the request is appropriate, errors due solely to the effects of the emergency or disaster will be excluded in the determination of the State's error rate beginning with the date of the emergency or disaster.

Monthly Reporting

Section 408(c)(3)(E) excludes, for QC purposes, errors which result from "the failure of a family to submit monthly reports to the State pursuant to section 402(a)(14), if the failure did not affect the amount of the payment." Under section 402(a)(14), as amended by section 5051 of the Omnibus Budget Reconciliation Act of 1990, failure to submit a monthly report where required under a State plan option, results in an assistance unit becoming ineligible for assistance payments. We interpret "did not affect the amount of the payment" to exclude the ineligibility of the assistance unit which results from a failure to submit the monthly report where required by the State. Otherwise, the failure to submit a monthly report would always affect the amount of payment, since it is a condition of eligibility, and section 408(c)(3)(E) would have no effect. Based on this interpretation, we will no longer cite as an error failure to file a monthly report where required. However, information that should have been reported on the monthly report will continue to be evaluated for its effect on the accuracy of the payment and errors will be cited as appropriate.

Payments Considered Erroneous

Section 408(c)(4) identifies two types of payment error which occur solely as the result of the failure on the part of AFDC recipients to meet statutory conditions of eligibility and which count in the computation of a State's error rate. These conditions are the failure to assign child support rights without good cause and the failure to apply for or provide a Social Security number for each member of the assistance unit.

It has been suggested by State representatives that since only errors for failure to meet these two requirements are expressly identified in the statute, errors for other statutory eligibility conditions should also not count as part of the QC error rate. We disagree. Since section 408 does not address other factors of eligibility, including such factors as income and resource limits, we believe Congress intended that adherence to all other statutory eligibility factors would continue under the revised QC system. We believe that these two requirements were included in

section 408 to affirm the congressional view of their importance. Moreover, section 408 did not repeal basic statutory requirements of the AFDC program, but clarified how QC must review certain eligibility factors for the purpose of calculating the error rate.

All statutory conditions of eligibility are important, serve program objectives and must be met for an individual to be eligible for assistance. The continued QC review of assignment of child support rights and enumeration requirements emphasize payment accuracy, effective management objectives, and provide information to improve verification capability to reduce the need for assistance by identifying means for support other than AFDC assistance.

Since section 408(c)(4)(B) specifies that the enumeration requirement is met if an application for a Social Security number is made within 30 days after the date of application, we have included this requirement in the proposed regulations at § 205.42(d)(2)(v). Payments made during the 30-day period to recipients who have not met the enumeration requirement will be considered as correct payments provided all other factors of eligibility are met.

Treatment of Fair Hearing Decisions

We have incorporated in these proposed regulations at § 205.42(d)(2)(vi) the current QC policy regarding the impact of fair hearing decisions on QC payment errors. A change to a QC identified payment error as a result of a fair hearing decision is permitted, provided the State had defended the adverse action during the hearing process, and the decision was based only on the facts of the case at the time of the QC review. In addition to the above criteria, we are proposing to establish a time limit of eleven months, after the end of the annual sample period to which the error rates would apply, for States to submit requests for such changes, e.g., September 1, 1992 for fiscal year 1991 error rates. We believe that this addition to the criteria is both necessary and reasonable given the clear congressional concern about the timely release of the error rates, and the prompt notification to States of potential disallowances.

In the proposed regulations at § 205.43(d), we have established one year after the end of the annual sample period, or within 30 calendar days of the last decision of the QC Review Panel, whichever is later, as the target date for the release of the error rates. Since the national average error rate achieved in a year constitutes the error rate tolerance

level that will be used to measure State performance for the same year, it is essential that once the State error rates are released, no further error rate adjustments be considered. The 30-day period between the submittal deadline for requests for changes due to fair hearing decisions and the expected error rate release date is necessary in order for the Department to evaluate the circumstances of the request and make any necessary adjustment in the error rates. Such requests will not be considered after that time. Since these will not be difference cases, we can give States this much time and still issue final error rates 12 months after the end of the fiscal year. Should a State be subject to a disallowance, the State is afforded the opportunity to challenge the disallowance before the Departmental Appeals Board.

Sample Disposition and Data Submission Time Frames

Current regulations at § 205.40(b)(2)(ii) require States to dispose of and report findings on 90 percent, or all but five cases of the active and negative cases selected each month within 75 days after the end of the sample month; 95 percent, or all but five cases of the cases selected each month within 95 days of the end of the sample month; and 100 percent of the active and negative case samples within 120 days of the sample month. After consultation with State representatives, who recommended a single monthly 120 day deadline with no interim deadlines, we are proposing in § 205.42(e) the following changes to the disposition and reporting time frames: 75 percent of the active and negative cases selected each month within 75 days of the end of the sample month and 100 percent within 95 days after the end of the sample month. We intend to use similar disposition time frames for the Federal subsample as those imposed on the States.

We are proposing in § 205.42(f)(1) to waive the "75 percent in 75 days" disposition standard where the Department has approved an alternate sample disposition plan based on permanent or recurring events in the State at certain times of the year. In § 205.42(e)(1)(iii), unless the Department has approved a temporary alternate sample disposition plan for a particular annual sample period because of an unforeseen event in that year (as indicated in § 205.42(f)(2)), we propose that States immediately submit a report on cases that remain pending 95 days after the end of the sample month explaining why each case was not disposed of and the date by which it will

be. The Department may grant an extension to the sample disposition time frame for individual cases that exceed the 95-day deadline if sufficient justification for each overdue case is provided. However, at § 205.42(h)(2), in the event of a significant failure on the part of a State to dispose of the required number of monthly AFDC sample cases within the proposed time frames, or time frames approved under a temporary alternate disposition plan, the Department may initiate action to establish the State's error rate.

The 95-day disposition deadline for all cases selected each month is necessary to ensure that the proposed time frames for establishing and issuing the State error rates are met. Tracking data for fiscal year 1988 on State dispositions indicate that 43 States met the existing "95 percent in 95 days" disposition standard. We believe that the proposed 95-day deadline standard, while somewhat more rigorous, is reasonable, particularly in light of the availability of alternate disposition plans. We also believe the proposed changes in the milestone and deadline dates provide flexibility for timely processing of sample cases while ensuring an even flow of work at both the State and Federal level.

The proposed standard to dispose of 100 percent of the sample selected each month within 95 days after the end of the sample month is the same standard that exists in the Food Stamp QC program. While the Food Stamp QC program requires 90 percent of the sample to be disposed of in 75 days, we are proposing a rate of only 75 percent in 75 days. This difference in interim standards is based on State concerns about the need for any interim standard and the fact that many States do not meet the existing AFDC 75-day standard.

The provision for an alternate sample disposition plan exists under current regulations at § 205.40(b)(3). The extension to the time frames for individual cases where an alternate disposition plan has not been submitted or approved is new.

Failure To Complete Sample

Pursuant to section 408(b)(1)(B), if a State fails to provide the Department with information necessary to determine the State's AFDC error rate, the Department, directly or through contractual or other arrangements as determined appropriate, shall establish the error rate for the State on the basis of the best data reasonably available to the Department and in accordance with the statistical methods that would apply

if the reviews were conducted by the State.

We interpret section 408(b)(1)(B) to mean that the State must complete a proper sample, that the results of this sample must be reported timely, and that payment and eligibility records must be provided promptly upon request for the Federal rereview. By "proper sample", we mean that the State has completed a sample in accordance with federally prescribed instructions as set forth in QC Manual, section 2. Thus, if a State does not follow the federally prescribed instructions, or if the State does not select the sample in accordance with its approved sampling plan, the sample will be considered invalid, unreliable, or both. Similarly, if a State does not complete the federally prescribed minimum number of reviews and submit the review data in a timely manner, the available sample findings will be considered to be unreliable. State records must be timely supplied for the Federal rereview to enable the Department to meet the proposed time frames for establishing and issuing the State error rates.

We have interpreted the statutory language that the Department shall use the best data "reasonably" available as authorizing the Department to determine the method(s) to be used to establish the State's error rate. Thus, the actual method used will depend on the particular circumstances involved. Some of the circumstances we will consider include the timing and extent of a State's non-cooperation, and the time and resources available to the Department. For example, from the beginning of the annual sample period a State completed a valid but less reliable sample because the sample contained fewer than the prescribed number of AFDC active case reviews. We may combine this State sample with the Federal subsample of this State sample and add an additional Federal sample (de novo review) to determine the State's error rate. However, if we have reason to question the State's findings, we may conduct an audit directly or through a contractual agreement with a third party.

Similarly, if we have reason to question the validity of the reviews being conducted by the State because the State does not conduct its reviews and verification in accordance with federally prescribed procedures or improperly excludes cases from its sample, and the State fails to timely take the remedial action that is indicated, it may become necessary for us to complete these reviews.

In any case in which it is necessary for the Department to determine a State AFDC error rate because the State failed either to complete the prescribed number of case reviews or to cooperate by providing in a timely manner the required valid and reliable information which is necessary to compute its error rate, the proposed regulations provide that the full costs incurred by the Department in making the determination shall be passed on to the State by reducing the amount of administrative costs that would otherwise be payable to the State.

We interpret section 408(b)(1)(E)(ii) to require that the full costs incurred by the Department shall be passed on to the State. These costs are separate from any reductions in FFP for erroneous assistance payments that may be required because a State's error rate is in excess of the national standard. The recoupment of costs will be accomplished by reducing the amount that would otherwise be payable to the State for administrative expenses, generally no later than the second quarter following the quarter in which the costs of compiling the data for determining the State's error rate are available.

The costs assessed to a State will include such items as contract costs, Federal salaries and overtime if appropriate, and travel, as well as any other expenditures incurred by the Department in completing a proper sample. Proposed regulations are set forth at § 205.42(h).

Differences Between State and Federal Review Findings

Section 408(b)(3), in describing the process for resolving differences between State and Federal AFDC review findings, indicates that a "difference case" is a case in which the Department finds the case erroneously paid, and the State review determined it correctly paid. We believe that a somewhat broader concept is appropriate in order to address other types of inconsistencies between Federal and State findings, e.g., in situations where the State finds a case incorrectly paid and the Federal review finds the case correctly paid.

In the proposed regulations at § 205.42(i), we define a difference case as a disagreement between State and Federal review findings that may affect the State's official payment error rate. This definition incorporates our current operational definition in QC Manual, section 3. Specifically, a difference case would be a Federal rereview case where there is a disagreement between (1) a

State review and Federal rereview finding of a correct payment, overpayment, or a payment to an ineligible case, or (2) a State finding of a correct payment, overpayment, underpayment, or a payment to an ineligible case and a Federal finding that the sample case should be dropped from the QC review.

Quality Control Review Panel

Under current procedures, there is a two-step administrative appeal process for resolving differences between State and Federal active AFDC review findings within the FSA regional office. Section 408(b)(4) requires the establishment of a Quality Control Review Panel (Panel) to review differences cases. After consultation with State representatives, we have decided to retain one appeal level within FSA, the appeal to the FSA Regional Administrator (RA), to ensure the accuracy of the Federal difference decision before involving the Panel. We have also decided to retain the existing 28-day time frame for States to request a review by the RA. In the proposed regulations, at § 205.42(i)(2), we have defined the 28 calendar days in terms of the receipt date of the difference notification and the postmarked date of the appeal letter. This is consistent with the request by the State representatives for a change in how the time frame should be measured.

Given the congressional desire for timely release of error rates, we are proposing that States have 28 calendar days from the receipt of the RA's decision to sustain a difference case to submit an appeal of the difference to the Panel. (We plan to send difference notifications and RAs' appeal decisions via telefax or certified mail to ensure uniform measurement of a State's receipt date.) The appeal request will include all supporting documentation. The proposed regulations do not limit the kinds of documentation a State may submit to substantiate its position. However, the appeal can only be based on issues that were raised in the initial appeal to the RA. In addition, the State will be required to send an informational copy of its appeal request to the RA concurrent with the submittal of the request to the Panel.

We are proposing a target 60-day time period be established for the Panel to render a decision after receipt of a State's appeal request. The 60 days is viewed as a goal since a complex issue requiring supplemental information from the State, or the RA, could delay the decision. Sections 408(b)(5) (C) and (D) provide that the decisions of the Panel in difference cases shall constitute those

of the Secretary and that such decisions are not appealable. We interpret this to mean that the Secretary may delegate these decisions to the Panel unless he chooses to review individual difference cases. If a State appeals a disallowance for an error rate in excess of the national standard to the Departmental Appeals Board, the decision of the Panel, or of the Secretary, in difference cases will not be reviewable by the Board.

We believe that the two-level appeal process and the specified time periods for submittal and consideration of an appeal request provides for extensive and appropriate review of the merits of each difference case.

Error Rate and Disallowance Calculations

Error Rate Calculation

The conference report, in describing the purpose and basis for the revised AFDC QC system, states "[t]he conferees assume that the Secretary will use the same statistical methods to estimate errors as have been used under the current quality control system" (Congressional Record, H 9591, November 21, 1989). Therefore, the current methodology for determining a State's payment error rate (i.e., the point estimate from the regression estimator and the double sampling procedure described in QC Manual, section 2) is unchanged by the proposed regulation.

To conform to standard statistical practice, we are proposing to modify the weighting procedure used in determining the national overpayment and underpayment rates. Currently, the national overpayment (or underpayment) rate is the sum, over all States, of the product of each State's regressed overpayment (or underpayment) rate and the ratio of the State's total amount of assistance payments to the total amount of assistance payments of all States in the fiscal year. In the new method, the national overpayment (or underpayment) rate would be the ratio of the sum, over all States, of the product of each State's average monthly caseload and regressed average monthly erroneous assistance payment (or average monthly assistance payment that should have been but was erroneously not made) per case, to the sum, over all States, of the product of each State's average monthly caseload and average monthly payment per case for the fiscal year.

As long as sample sizes are sufficiently large, the current weighting procedure is a valid estimation procedure to use for computing the

national payment error rates. However, since more States are electing to reduce their samples to their minimum required size, we are proposing to change this procedure. The new method is less subject to bias associated with smaller sample sizes than our current method and comports with the error rate definitions in the proposed regulations at § 205.43(b)(3) and (5).

The current weighting procedure for computing the payment error rate for States that use disproportionate stratified sampling are the same as the weighting procedure for computing the national overpayment and underpayment rates, except the procedure applied to each State is applied to each stratum. We also propose to use the new weighting procedure for such States.

Error Rate Notification

The current regulation does not specify a time frame for notifying a State of its error rate for a fiscal year. Under the proposed regulations at § 205.43(d), the Department's target for notifying each State of its overpayment and underpayment rates and the national overpayment and underpayment rates will be one year after the end of the annual sample period to which the error rates apply. While we would expect to release the error rates as close to the one-year target date as possible, we are not establishing a fixed date in the regulations for the following reasons: (1) Final national error rates can not be calculated until all sample cases are completed and all differences are resolved; (2) if a State failed to complete a valid and reliable sample, we would need to establish the error rate for the State on the basis of the best data reasonably available and the calculation and release of error rates would likely be delayed; (3) the same would be true if an unforeseen event occurred and we approved an alternate disposition plan which provided for the completion of the State sample beyond the prescribed time frames; (4) a delay in the timely adjudication of appeals by the Panel due to the complexity of appeal issues could also delay the release of the error rates.

Calculation of Disallowances

Under current regulations at § 205.44(f), if a State's payment error rate exceeds the 3 percent national standard (4 percent for Guam, Puerto Rico, and the Virgin Islands) the disallowance is computed as the product of the difference between the State's payment error rate and the national standard times the Federal share of the total amount of assistance paid under

the State plan. However, OBRA 1989 eliminates all past QC disallowances and changes the method of determining such disallowances for the future. In section 408(m)(1), the national standard is set as the national overpayment rate for the fiscal year or four percent, whichever is higher. If a State's overpayment rate exceeds the national standard for a fiscal year, FFP would be reduced.

Several adjustments are made before the amount of disallowance is determined. If the State's underpayment rate is less than the national underpayment rate for the fiscal year, the State's overpayment rate would be reduced by the amount by which the national underpayment rate exceeds the State's underpayment rate. Section 408(d)(3) provides that at the request of the State, the underpayment reduction may be applied to either of the two following fiscal years instead of to the year to which the reduction would otherwise apply. We interpret this to mean that a State may use the underpayment reduction earned in a fiscal year one time only, either in the year in which it is earned or in one of the following two years. Only one underpayment reduction would be applied to any given year.

We believe Congress provided States flexibility in the application of the underpayment adjustment in recognition that, in any given year, a significant number of States would be below the national standard. In order to encourage States to maintain low underpayment rates, even in a year when their payment error rates were below the national standard, the statute allows for the adjustment to be applied in one of the three years. The one time and non-cumulative application of the underpayment adjustment, as specified in the proposed regulations at § 205.43(e)(1)(i), is consistent with the adjustments to the disallowance for overpayment recoveries and child support collections, as provided in sections 408 (f)(2) and (f)(3) of the Social Security Act. For example, overpayment recoveries collected in a single year are used to offset the disallowances for that year.

We are proposing to provide those States whose unadjusted overpayment rates exceeds the national standard, 30 calendar days from the date of receipt of notification of their error rates to advise us of their decision, where applicable, on the application of the underpayment adjustment. If the State does not notify us in writing within this time period, we will use the adjustment that would otherwise apply for the fiscal year.

A State's basic disallowance for a fiscal year is the product of (1) the Federal share of the total amount of assistance paid under the State plan, (2) the difference between the State's adjusted payment error rate and the national standard, and (3) the ratio of the difference between the State's adjusted error rate and the national standard to the national standard. A State's basic disallowance for a fiscal year shall be reduced by its overpayment recoveries and by its improvement in its child support collection rate. The amount of reduction for overpayment recoveries is the product of the Federal share of payments recovered in the fiscal year and the proportion of the State's adjusted payment error rate in excess of the national standard.

The proposed regulations follow the detail defined by the statute on how the child support collection rate will be used to reduce the basic disallowance for the State. If a State's child support collection rate is greater than the national child support collection rate for the fiscal year, or is greater than the average of the State's child support collection rate for the three preceding fiscal years, the State's basic disallowance is further reduced. The amount of reduction will be the larger of the proportions by which the State's collection rate exceeds the national collection rate or exceeds the State's average collection rate for the preceding three years. (The smaller collection rate will produce the larger proportion and, thus, a larger disallowance reduction.) We will use the information on Forms FSA-231 and OCSE-158 and 158 to make the adjustments for the Federal share of overpayments recovered and child support collection rates respectively. AFDC arrears only cases will be included in the calculation of the child support collection rates. See § 205.43(e)(5) of the proposed regulations for a detailed example of the disallowance calculation.

Disallowance Notification

The current regulations do not specify a time frame for notification to States that are disallowance liable. Under the proposed regulations at § 205.43(f), the Department's target for notifying States with overpayment rates above the national standard of their disallowance will be within 60 calendar days after the release of the error rates for the fiscal year. As indicated earlier, the 60 days include 30 days for States to decide on the application of the underpayment adjustment to their overpayment rate, where applicable. We view these time frames as consistent with the

congressional intent to expeditiously determine error rates and collect the Federal share of erroneous assistance payments above the national standard.

Data Management

The QC system, as a management information system, provides ongoing data on the frequency, magnitude and source of error to guide States in payment accuracy improvement initiatives. Previously, States were not only required to provide the Department with the results of the individual QC case reviews via a computer, but also with a detailed annual corrective action plan. The plan was required to contain the State's identification and analysis of error concentration, a determination of the causes of errors, specific proposed corrective actions, including implementation steps, and an analysis of the impact on the error rate of previously implemented corrective actions.

We are proposing to eliminate this annual reporting requirement. This proposed action should not be viewed as an indication of diminished interest by the Department in the corrective action process nor in the States' responsibility to take appropriate action to reduce the incidence of incorrect payments. States continue to be required, under the proposed rules at § 205.40(d)(4), to analyze the QC data and take necessary corrective action. At current error rate levels, over one billion dollars in State and Federal assistance payment funds are misspent each year. Continued and renewed corrective action efforts are necessary to reduce the level of these erroneous payments, even for States with error rates below the national standard. While we no longer will require States to document these efforts on an ongoing basis via submittal of an annual corrective action plan, we expect States to carry out these activities and furnish data on corrective action activities upon request. We will continue to assess and monitor State error rate performance and provide the States with detailed national error rate and characteristic data for comparative purposes.

Regulatory Procedures

Executive Order 12291

These regulations do not meet any of the criteria for a major regulation. Further, although Federal matching may be reduced, the reduction results from legislation and not from the terms of these regulations. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations impose no new reporting or recordkeeping requirements pursuant to the Paperwork Reduction Act of 1980 (Pub.L. No. 96-511).

Regulatory Flexibility Act

We certify that these proposed regulations will not, if promulgated, have significant economic impact on a substantial number of small entities because the rules involve minor changes in State agency procedures. These regulations revise the existing Federal quality control system as it applies to the States' use of Federal funds in administering the AFDC program. A regulatory flexibility analysis is not required because the Federal government will only be recouping monies that were incorrectly paid by the States.

(Catalog of Federal Domestic Assistance Programs 13.780, Assistance Payments Maintenance Assistance)

List of Subparts in 45 CFR Part 205

Computer technology, Family Assistance Office, Grant programs-social programs, Privacy, Public assistance programs, Reporting and recordkeeping requirements, Wages.

Dated: October 23, 1990.

Jo Anne B. Barnhart,

Assistant Secretary for Family Support.

Approved: March 27, 1991.

Louis W. Sullivan,

Secretary, Department of Health and Human Services.

**PART 205—GENERAL
ADMINISTRATION—PUBLIC
ASSISTANCE PROGRAMS**

1. The authority citation for part 205 is revised to read as follows:

Authority: Secs. 402, 403, 406, 1102, and 1106(a), Social Security Act (42 U.S.C. 802, 803, 806, 1302, and 1306(a)); sec. 9101, Pub.L. 99-509, 100 Stat. 1972; sec. 202, Pub.L. 100-485, 102 Stat. 2377; sec. 8604, Pub.L. 101-239, 103 Stat. 2454.

2. Sections 205.40, 205.42 and 205.43 are revised; § 205.41 is added; and § 205.44 is removed and reserved.
§ 205.40 Quality control system.

(a) *Scope.* Sections 205.40 through 205.43 set forth requirements—

(1) For a quality control (QC) system for the Aid to Families With Dependent Children (AFDC) program (and for the Adult assistance programs in Guam, Puerto Rico, and the Virgin Islands) designed to reduce incorrect expenditures by identifying the nature, magnitude and causes of all errors and to improve the accuracy of payments to

recipients of the AFDC and Adult assistance programs;

(2) For obtaining data on the correctness of negative case actions and reducing the incidence of incorrect denials for and terminations of assistance;

(3) For determining the amount of any disallowance required to be repaid to the Department due to excess erroneous assistance payments made by the State under the AFDC program.

(b) *Definitions.* For purposes of §§ 205.40 through 205.43:

(1) *Assistance unit, or case,* means all individuals whose needs, income, and resources are considered in determining eligibility for, and the amount of, a payment for which Federal financial participation is claimed under this chapter.

(2) *Department* means the U.S. Department of Health and Human Services.

(3) *Disallowance* means the amount of reduction in Federal financial participation.

(4) *Disposed of case* means that a decision was made on the eligibility and payment status of a case under review, or that the case was dropped or listed in error.

(5) *Erroneous payments* means the sum of overpayments made to eligible assistance units and payments to ineligible assistance units.

(6) *Fiscal year, or annual sample period,* means the 12-month period, October 1 through September 30.

(7) *Negative case action* means an action to deny an application for assistance or to otherwise dispose of that application without a determination of eligibility (for instance, because the application was withdrawn or abandoned), or to terminate assistance.

(8) *Overpayment* means a financial assistance payment received by or for an assistance unit for the review month, which exceeds by at least \$5.00 the amount for which that unit was eligible under permissible State practice in effect on the first day of the review month.

(9) *Payment* means a single payment or multiple payments received for a specific calendar or fiscal month.

(10) *Payment to ineligibles* means a financial assistance payment received by or for an assistance unit for the review month, when that assistance unit was not eligible for any part of the payment under permissible State practice in effect on the first day of the review month, even though the State agency had not made a finding of ineligibility under § 206.10(a)(5) of this chapter.

(11) *Permissible State practice* means written rules and policies relating to eligibility and payment that are in accordance with the State plan provisions or proposed plan amendments submitted to but not acted upon by the Department. Where the plan provision does not conform to Federal regulations or law, permissible State practice means the Federal regulations or law, except as noted in § 205.42(b)(1).

(12) *Quality Control Manual* means the "AFDC Quality Control Manual" that is issued by the Family Support Administration of the Department of Health and Human Services.

(13) *Review month, or sample month,* means the specific calendar or fiscal month for which the assistance payment under review is received.

(14) *Secretary* means the Secretary of Health and Human Services.

(15) *State* means the several States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands and American Samoa.

(16) *Underpayment* means a financial assistance payment received by or for an assistance unit for the review month which is at least \$5.00 less than the amount for which that assistance unit was eligible under permissible State practice in effect on the first day of the review month.

(c) *State plan requirements.* A State plan under title IV-A, and in Guam, Puerto Rico, and the Virgin Islands under titles I, X, XIV or XVI (AABD), shall provide a continuing QC system for assuring that assistance is furnished in accordance with permissible State practice as defined in paragraph (b) of this section.

(d) *Basic elements of the quality control system—*(1) *General requirements.* The State shall operate the QC system in accordance with §§ 205.40 through 205.43, other applicable regulations of this chapter, and the implementing procedures in the QC Manual.

(2) *Sampling requirements.* The State shall carry out sampling in accordance with the requirements specified in § 205.41, and with the implementing procedures in the QC Manual, section 2.

(3) *Review requirements.* The State shall conduct QC reviews in accordance with the requirements specified in § 205.42, and with the implementing procedures in the QC Manual, section 3.

(4) *Data management requirements.* The State shall provide the resources and methods necessary to analyze the findings of the system and shall take appropriate corrective action on the causes of improperly authorized or denied assistance. The State shall

provide access to and/or furnish the Department information or data on this activity upon request.

§ 205.41 Sampling plan and procedures.

(a) *Purpose.* This section provides the sampling plan, sample size requirements, and procedures for the AFDC and Adult assistance programs.

(b) *Definitions.* In addition to the definitions in § 205.40(b), the following definitions apply to this section.

(1) *Completed active case review* means a case that has been subject to QC review and a finding of correctly paid, overpaid, underpaid or ineligible has been made.

(2) *Completed negative case action review* means a negative case action that has been subject to QC review and a finding that the action to deny or to terminate assistance is correct or incorrect has been made.

(c) *Plan approval and submittal dates.* The State shall submit to the Department for approval a QC sampling plan (or revisions to a current plan), that meets the requirements of this section at least 60 calendar days before the beginning of the annual sample period in which it is to be implemented. The State is not required to resubmit the plan if it is unchanged from a previous sample period. Universe estimates (i.e., average monthly caseload and total number of negative case actions) and sample intervals for the annual period are required 30 calendar days prior to the selection of the October sample. The reliability waiver statements for AFDC active cases, as described below in paragraph (d)(3)(ii) of this section, are required by the first day of the annual sample period. The monthly list of selected sample cases, computer-generated random start and seed numbers, and reserve pool cases (if applicable) are to be submitted within 10 calendar days of the date of sample selection specified in the State sampling plan.

(d) *Plan requirements.* The State shall have an approved sampling plan in effect for the full annual sample period that includes the following:

- (1) *Population to be sampled;*
- (2) *List(s) from which the sample is selected,* describing the following characteristics:
 - (i) Sources;
 - (ii) Components;
 - (iii) Accuracy and completeness of the list(s) in relation to the population of interest. The list of active cases shall be an unduplicated list of all assistance units for which either a full or partial payment was made for the review month by the end of that month. The list of negative case actions shall be a list of

all unduplicated completed actions taken by the State to deny or terminate financial assistance for the review month, except for those assistance units that are on the active case list for the same review month;

(iv) Form and structure of the list (e.g., all or part is automated; supplemental lists are added; code definitions are used);

(v) Frequency of updating the list or its sources;

(vi) Estimated proportion of cases for which a review may not be completed; and

(vii) Methods of deleting listed-in-error cases from the list.

(3) *Sample size* (the number to be completed). The AFDC and the Adult assistance sample sizes for the annual sample period shall be determined in accordance with the requirements in this section. The active case samples shall be based on the estimated average monthly caseload for the annual sample period. The negative case action samples shall be based on the estimated total number of negative case actions for the annual sample period.

(i) *AFDC active cases—standard sample size.* The required standard sample sizes for AFDC completed active case reviews for specified estimated average monthly caseloads shall be as follows:

Average monthly caseload (N)	Completed annual sample size (n)
60,000 and over.....	2,400
10,000–59,999.....	(¹)
Under 10,000.....	300
$n = 300 + 0.042 (N - 10,000)$	

¹ Use equation below.

(ii) *AFDC active cases—minimum sample size.* A State may choose to reduce its sample size for AFDC completed active case reviews below the standard size only before the beginning of the annual sample period. For each annual period where the State chooses to reduce its standard sample size, the State shall provide the Department with a statement (see Appendix to this section) as an addendum to the sampling plan, accepting the reliability of the payment error rate and waiving the right to challenge the resulting AFDC (and Medicaid) error rates based on the reduced sample size. The required minimum sample sizes for AFDC completed active case reviews for specified estimated average monthly caseloads shall be as follows:

Average monthly caseload (N)	Completed annual sample size (n)
60,000 and over.....	1,200
10,000–59,999.....	(¹)
Under 10,000.....	300
$n = 300 + 0.018 (N - 10,000)$	

¹ Use equation below

(iii) *AFDC negative case action sample size.* The required negative case action sample sizes for AFDC completed negative case action reviews for specified estimated total number of negative case actions shall be as follows:

Total number of negative case actions (N)	Completed annual sample size (n)
180,000 and over.....	800
14,000 to 179,999.....	Use equation below
700 to 13,999.....	175
Under 700.....	100 or $\frac{1}{2} (N)$, whichever is less.
$n = 175 + 0.00376 (N - 14,000)$	

(iv) *Adult active cases—standard sample size.* The standard annual sample sizes required for completed active Adult assistance case reviews shall be as follows:

Guam and the Virgin Islands.....150
Puerto Rico.....use formula below
 $300 + 0.02626 (N - 10,000)$

where N is the estimated average monthly caseload.

(v) *Adult active cases—minimum sample size.* The minimum annual sample sizes required for completed active Adult assistance case reviews shall be as follows:

Guam and the Virgin Islands.....75
Puerto Rico.....use formula below
 $300 + 0.01125 (N - 10,000)$

where N is the estimated average monthly caseload.

(vi) *Adult negative case action sample size.* The required annual sample size for completed Adult assistance negative case action reviews shall be the same as specified for AFDC negative case action cases in paragraph (d)(3)(iii) of this section.

(4) *Sample selection procedure.* The procedure for sample selection shall conform to principles of probability sampling. Approximately one-twelfth of the annual sample shall be selected each month. A separate sample shall be selected for active cases and negative case actions. The active case sample shall be selected from a list of all active cases with payments authorized prior to sample selection and paid by the end of the month for which it is reviewed. The

negative case action sample shall be selected from a list of all negative actions taken to deny or terminate assistance with effective dates in the review month, except for those cases that were reinstated with a full or partial payment during that month. Systematic random sampling shall be used in making the selection.

(5) *Option to drop or complete certain cases.* The State shall specify in its sampling plan whether it chooses to drop or complete a sample case for which less than six months have elapsed since it was last selected and reviewed, regardless of annual sample period.

(6) *Procedure to correct for over- or undersampling.* States shall evaluate their caseload estimates during the annual sample period to ensure that the required number of case reviews is completed. A change in the caseload estimate may require an adjustment to the sample size. Undersampling shall be corrected during the annual sampling period. Oversampling may be corrected at the State's option and, if exercised, shall be coordinated with the Federal regional office. When correcting for over- or undersampling, the State shall follow the procedures described in QC Manual, section 2.

(e) *Review of State sampling procedures.* In order for the Department to carry out its responsibilities under § 201.10 of this chapter, the State shall fully document and make available for review by the Department all sampling procedures, including construction and content of the universe and sample lists.

Appendix—State Reliability Waiver Statement

I (We), _____
the _____
State Official Name(s)
Position(s)

certify that I/we have the authority to enter into binding agreements on behalf of the (State) AFDC and Medicaid programs. Pursuant to 45 CFR 205.41(d)(3)(ii), I/we, acting in my/our official capacity(ies), elect on behalf of the State to exercise the option to reduce the standard AFDC-QC active sample size of _____ completed case reviews to _____ completed case reviews based on an estimated average monthly caseload of _____ for the annual sample period, October 1, 19____ through September 30, 19____. If the reduced sample size specified herein does not meet the required sample size as determined by the actual average monthly caseload for this annual sample period pursuant to the formula specified in QC Manual, section 2, the State agrees to increase this reduced sample size to the required minimum. In so doing, I/we recognize that by electing this option the AFDC and Medicaid payment error rates based on this reduced sample size may have

less precision than the error rates produced by the standard sample size. Because of this possible effect, the State waives the right to challenge the precision of the resulting AFDC error rate based on the reduced sample size. The State also waives the right to challenge the precision of the Medicaid error rate based on this reduced AFDC sample size.

Signature _____

Title _____

Date _____

Signature _____

Title _____

Date _____

§ 205.42 Case review and management requirements.

(a) *Purpose.* Except for §§ 205.42(g), (h) and (i) which apply only to AFDC, this section establishes the rules and procedures for the conduct of QC case reviews, completion of QC sample cases and the determination of whether an error exists in a sample case in the AFDC and Adult assistance programs.

(b) *Review basis.* The review shall be conducted against permissible State practice, except as follows:

(1) (i) Where an approved State plan is inconsistent with Federal law or regulations, the review shall be conducted against the approved State plan until either an amendment to remove the inconsistency is submitted or 60 calendar days have elapsed since the State has been notified of the inconsistency, whichever occurs earlier. If the plan amendment is submitted timely, the review shall be conducted against the submitted plan amendment. If the plan amendment is not approved by the Department or is not submitted timely, sample cases selected for the review month immediately following the date that disapproval becomes final or the 60-day period, whichever occurs earlier, shall be reviewed against applicable Federal law and regulations until the State has a revised approved plan.

(ii) Where a State implements a pending plan amendment which is subsequently disapproved by the Department, the review shall be conducted against the pending plan amendment until disapproval becomes final. Sample cases selected for the review month immediately following the date that disapproval becomes final shall be reviewed against the approved plan if the plan is consistent with Federal law and regulations. If the approved plan is inconsistent with Federal law and regulations, the review

shall be conducted against applicable Federal law and regulations until the State has a revised approved plan amendment.

(iii) If it is necessary for the State to enact a law in order to remove the inconsistency, the State shall immediately notify the Department. The Department shall establish a reasonable period of time, on a case-by-case basis, for the State to enact the law and amend its State plan. The review shall continue to be conducted against the State's original plan during this time period.

(2) Where the State makes payment in compliance with a court order, the review shall be conducted against the provisions of the court order.

(c) *Case review requirements.* (1) The State shall review all cases selected in the active and negative case samples as prescribed in § 205.41, and reach a review finding as required on each case.

(2) The review shall include: The examination and analysis of the case record; the conduct of a field investigation with a face-to-face interview in all cases in the active case sample and, as necessary, in the negative case action sample; the verification and documentation of all required review elements through contacts with appropriate collateral sources of information; the securing of specified primary or secondary evidence; the determination of the correctness of the eligibility and payment decisions; and, where required, the transmission of the coded findings to a designated host computer.

(3) The State shall use the forms and schedules set forth in the QC Manual and otherwise prescribed by the Department to document all review findings.

(d) *Special provisions applicable to error determination.* The following provisions modify what constitutes a payment error under permissible State practice.

(1) *Changes in circumstances.* For purposes of this paragraph, a change in circumstances means a change occurring after the date of authorization of the initial payment which may affect the assistance unit's eligibility and/or payment amount. Multiple changes in circumstances shall be individually evaluated to assess their impact on the final payment error determination. A change in policy or a hearing decision shall be considered a change in circumstances.

(i) A change in circumstances shall not be counted as a payment error if the change occurred in the review month or the month immediately preceding the review month or, if the review month's

payment continues unadjusted because a hearing was requested.

(ii) A change in circumstances shall be counted as a payment error if the change was incorrectly reflected in the review month's payment or, if the change occurred in or before the second prior month to the review month and was not reflected in the review month's payment.

(2) *Other types of payment error not to be counted.* The following types of payment error shall not be counted as errors.

(i) Payment errors which result solely from failure on the part of the State to properly implement changes in Federal law for a period of six months after the effective date of the legislation or implementing regulations, whichever is later;

(ii) Payment errors which result solely from a State's reliance on, and correct use of, incorrect written factual information provided by the Department about matters of fact or from incorrect written statements of Federal policy by Department officials;

(iii) Payment errors which result from a declaration by the President or the State Governor, pursuant to Federal or State statute, of a state of emergency or major disaster and which directly affect the State's ability to make correct payments, if adequate documentation of the event and its impact are provided. The information shall include: a copy of the declaration; a detailed explanation of the circumstances; identification of the affected jurisdictions; the reason(s) why the State's ability to make correct payments has been or will be impaired; the length of time required to overcome the effects of the emergency or disaster; and the actions the State is taking to minimize the magnitude and duration of the negative effect;

(iv) Payment errors which result solely from failure of the assistance unit to submit a monthly report;

(v) Payment errors which result when a recipient does not have a social security number, but has filed an application for a number within 30 calendar days after the date of application for assistance; and

(vi) Payment errors which are inconsistent with fair hearing decisions under § 205.10 when the hearing decision meets the following criteria:

(A) The decision is based only on the facts of the case at the time of the QC review;

(B) The State defended the adverse action during the hearing process; and

(C) The request for adjustment is made within eleven months after the end of the annual sample period to which the adjustment would apply.

(e) *Sample disposition and data submission time frames.* (1) The State shall input review findings for disposed of active and negative sample cases into the computer terminal provided by the Federal government and transmit the edited data to a designated host computer. For States that cannot transmit the data due to lack of equipment or telecommunication linkage, the State shall submit the review findings in a format specified by the Department. The State shall dispose of and submit review findings in accordance with the following time frames:

(i) Seventy-five percent of the cases selected in both the active and negative case samples each month, within 75 calendar days after the end of each sample month;

(ii) One hundred percent of the cases selected in both the active and negative case samples each month, within 95 calendar days after the end of each sample month;

(iii) For each monthly sample case that remains pending after 95 days, unless an alternate disposition plan has been approved under paragraph (f)(2) of this section, the State shall immediately submit a report on why the case has not been disposed of and the date of expected disposition. If the Department finds there is insufficient justification for the delay, the Department may initiate action to establish the State's error rate under the procedures specified in paragraph (h) of this section.

(2) The State shall submit the review findings for disposed of sample cases promptly (i.e., at least on a monthly basis).

(f) *Alternate disposition plan.* (1) The State may submit an alternate disposition plan for the Department's approval if the State is unable to meet the requirements of paragraph (e)(1)(i) of this section, either as a result of circumstances of a permanent or recurring nature, or as a result of the occurrence of an unforeseen event during the annual sample period. Until the Department approves the alternate disposition plan, the State shall continue to comply with the requirements in paragraph (e)(1)(i) of this section. The alternate disposition plan may be approved when—

(i) The State's sample population is dispersed over such great distances that conducting the number of field interviews needed to meet the requirements of paragraph (e)(1)(i) of this section is cost prohibitive; or the State's usual weather conditions or geography make significant numbers of the sample population inaccessible or difficult to contact during certain times

of the year, making it a hardship for the State to comply with the requirements of paragraph (e)(1)(i) of this section.

(ii) The State's request contains evidence and data to justify the need for an alternate disposition plan, including a description of the State's population dispersal or inaccessibility, and the reason(s) why the State cannot comply with the requirements in paragraph (e)(1)(i) of this section.

(iii) The request contains detail on the State's proposed disposition schedule for sample cases, including the annual sample period(s) to be covered, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases; and

(iv) The request is submitted at least 60 calendar days before the beginning of the first annual sample period covered by the alternate disposition plan.

(2) The Department may approve a temporary alternate disposition plan for a particular annual sample period based on unforeseen events and allow the State to submit the edited review findings of its sample cases at later dates than those specified in paragraph (e)(1) of this section, when—

(i) Unforeseen events occur (e.g., floods, earthquakes, computer breakdowns, snow-storms and labor disputes) which temporarily prevent the State from meeting the requirements in paragraph (e) of this section; and

(ii) The request contains a description of the circumstances of the unforeseen event, the period to be covered by the alternate disposition plan, the revised disposition dates and percentages, and the revised schedule for the transmission of the edited review findings of the sample cases.

(g) *Data requirements for Federal re-review of State sample cases.* As part of the Federal monitoring of State QC programs, the Department conducts a re-review of a subsample of each State's AFDC active case sample.

(1) The State shall provide the original case record and State QC file for each subsample case, by mail or delivery service, within 10 calendar days of the request to the State for such information.

(2) The information provided shall include records relating to public assistance, recipients and third parties, including information available under § 205.55 of this chapter.

(3) The Department may grant exceptions to these requirements in unusual circumstances.

(h) *Effects of failure to complete the sample.* This paragraph provides the procedures that the Department shall

follow if a State fails to complete a valid and reliable AFDC active case sample in accordance with prescribed QC procedures and deadlines which include obtaining and using information available under § 205.55.

(1) The Department shall notify the State of its failure to complete its sample and provide the State the opportunity to negotiate a solution for the completion of the sample.

(2) Pursuant to section 408(b)(1)(B)(i) of the Social Security Act, when a State is unable to negotiate a solution or fails to carry out a negotiated solution, the Department shall, directly or through contractual or other such arrangement as appropriate, conduct the review and establish the fiscal year error rate for the State on the basis of the best data reasonably available to the Department, in accordance with statistical methods that would apply if the reviews were completed by the State.

(3) Notwithstanding any other provision of this chapter, total payments to a State under section 403(a)(3)(D) for the proper and efficient administration of the State plan shall be reduced by the costs incurred by the Federal government to complete the State's sample pursuant to section 408(b)(1)(B)(ii).

(i) *Difference resolution process.* A "difference" is a disagreement between State and Federal review findings that affect the State's official AFDC payment error rate (i.e., a disparity between a State review and Federal rereview finding pertaining to a correct payment, overpayment, or a payment to an ineligible case), or a State finding of a correct payment, overpayment, underpayment, or a payment to an ineligible case versus a finding that the sample case should be dropped from the QC review. The process for resolving the difference shall be as follows:

(1) The State shall be notified in writing of the disagreement and afforded an opportunity to request a review of the difference by the Regional Administrator, Family Support Administration.

(2) The State shall respond to the difference notification within 28 calendar days of receipt of such notification agreeing, or indicating reasons for disagreeing, with the Federal finding. Responses postmarked by the 28th calendar day after the date of the receipt of the difference letter shall be deemed to have met the time frame. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. If the State fails to respond within the 28-day time frame,

the Federal finding shall be the final decision of the Department.

(3) The Regional Administrator shall respond to the State within 21 calendar days of receipt of the reconsideration request. The response shall either be a decision on the State's request, or an indication that the decision will be delayed pending further review of applicable laws, regulations, or policies.

(4) If the State disagrees with the Regional Administrator's decision, it may seek review with the Quality Control Review Panel. The appeal request shall be postmarked by the 28th calendar day after the receipt of the Regional Administrator's decision, or the Regional Administrator's decision shall be the final decision of the Department. If the deadline is a Saturday, Sunday, legal holiday, or an office closing, the deadline shall be extended to the next business day. The State shall forward an informational copy of its appeal request to the Department's regional office concurrent with submittal of its request to the Review Panel. The State may submit to the Panel any documentation appropriate to substantiate its position as part of its appeal request. However, the appeal to the Panel can only be based on issue(s) raised during the initial appeal to the Regional Administrator.

(5) The Quality Control Review Panel shall evaluate all of the pertinent evidence submitted and shall notify the State of its decision (with a target date of 60 calendar days following the receipt of the State's appeal request). Unless the Secretary chooses to review individual difference cases, decisions of the Panel shall be made on the record and shall constitute the findings of the Secretary for establishing a State's payment error rate for the fiscal year.

§ 205.43 Determination of payment error rates and disallowances of federal financial participation for erroneous payments.

(a) *Purpose.* This section sets forth the rules and procedures for calculating State AFDC error rates and for disallowing Federal financial participation (FFP) to the States with erroneous payments in excess of the national standard for a fiscal year.

(b) *Definitions.* In addition to the definitions in §§ 205.40(b) and 205.41(b), the following definitions apply to this section.

(1) *Child support collection rate* means the ratio of—

(i) The sum of the number of AFDC cases reported by the State IV-D agency for each quarter in the fiscal year for which an assignment was made under

section 402(a)(26) of the Social Security Act and a collection was made, to

(ii) The sum of the number of AFDC cases with such assignments reported by the State IV-D agency for each quarter in the fiscal year.

(2) *National child support collection rate* for a fiscal year means the ratio of the sum of the number of cases (including AFDC arrears only cases) described in paragraph (b)(1)(i) of this section reported by all States for quarters in the fiscal year, to the sum of the number of cases described in paragraph (b)(1)(ii) of this section reported by all States for quarters in the fiscal year.

(3) *National overpayment rate* means the ratio of the total amount of erroneous assistance payments made by all States to the total amount of assistance paid by all States for the fiscal year. (This is equivalent to the ratio of the average monthly erroneous assistance payment per case to the average monthly assistance payment per case for all States.) The rate shall be computed as the ratio of the sum, over all States, of the product of each State's average monthly caseload and regressed average monthly erroneous assistance payment per case, to the sum, over all States, of the product of each State's average monthly caseload and average monthly assistance payment per case for the fiscal year.

(4) *National standard* means the national overpayment rate for the fiscal year or four percent, whichever is larger.

(5) *National underpayment rate* means the ratio of the total amount of assistance that should have been but was erroneously not paid for the fiscal year, to the total amount of assistance paid by all States. (This is equivalent to the ratio of the average monthly amount of assistance payment per case that should have been but was erroneously not made to the average monthly assistance payment per case for all States.) The rate shall be computed as the ratio of the sum, over all States, of the product of each State's average monthly caseload and regressed average monthly amount of assistance payment per case that should have been but was erroneously not made, to the sum, over all States, of the product of each State's average monthly caseload and average monthly assistance payment per case for the fiscal year.

(6) *Overpayment rate* means the ratio of the total amount of erroneous assistance payments made by a State for the fiscal year, to the total amount of assistance payments made. (This is equivalent to the ratio of the average monthly erroneous assistance payment

per case to the average monthly assistance payment per case in a State for the fiscal year). The rate shall be computed as the ratio of the State's regressed average monthly erroneous assistance payment per case to the State's average monthly assistance payment per case for the fiscal year. (For States that use disproportionate stratified sampling, the procedure shall be the same as the procedure in paragraph (b)(3) of this section, except "stratum" shall be substituted for "State".)

(7) *Underpayment rate* means the ratio of the total amount of assistance payments that should have been but was erroneously not made by a State for the fiscal year, to the total amount of assistance payment made. (This is equivalent to the ratio of the average monthly assistance payment per case that should have been but was erroneously not made by a State to the State's average monthly assistance payment per case for the fiscal year.) The rate shall be computed as the ratio of the regressed average monthly assistance payment per case that should have been but was erroneously not made by a State to the State's average monthly assistance payment per case for the fiscal year. (For State's that use disproportionate stratified sampling, the procedure shall be the same as the procedure in paragraph (b)(5) of this section, except "stratum" shall be substituted for "State".)

(c) *General*. All error rates for a State shall be based on a double sampling methodology which includes a statistically valid State sample of cases selected each month during the fiscal year, followed by a statistically valid Federal subsample of cases selected from the State completed samples. The State error rate shall be the point estimate of the regression estimator as set forth in the QC Manual.

(d) *Error rate notification*. The target date for the Department of notify each State of its overpayment and underpayment rates and the national overpayment and underpayment rates shall be one year after the end of the annual sample period or within 30 calendar days of the resolution by the Quality Control Review Panel of all differences, pursuant to § 205.42(i)(5), whichever is later.

(e) *Determination of disallowances in Federal matching funds*. If a State's overpayment rate for a fiscal year exceeds the national standard, Federal matching funds to the State shall be reduced. The procedure for determining

the disallowance for a fiscal year shall be as follows:

(1) *State adjusted overpayment rate*. A State with an underpayment rate below the national underpayment rate in a fiscal year shall have its overpayment rate reduced by the amount by which the national underpayment rate exceeds the State's underpayment rate.

(i) A State shall use the underpayment reduction earned in a fiscal year one time only, either in the year in which it was earned, or in one of the following two years. Only one underpayment reduction shall be applied in any one year. A reduction earned in one year shall not be used to reduce an overpayment rate of a prior year.

Example: The State was disallowance liable in 1992 and 1993 and had earned reductions for low underpayments in 1991, 1992 and 1993. The State can apply either the 1991 or 1992 reduction to the 1992 overpayment rate. If the 1991 reduction is applied to the 1992 error rate, the State can then apply either the 1992 or 1993 reduction to the 1993 error rate. If in 1992, the State applied the 1992 reduction, then either the 1991 or the 1993 reduction can be applied to the 1993 error rate. If in 1993, however, the State applied the 1993 reduction, then the 1991 reduction can no longer be used since it was not used in the year it was earned or one of the following two years.

(ii) At the request of a State, the Department shall apply the reduction, described in paragraph (e)(1)(i) of this section in determining the State's overpayment rate for either of the two following years instead of in determining the State's error rate for the fiscal year to which the reduction would otherwise apply. The request shall be made in writing within 30 calendar days from the date of receipt of notification described in paragraph (d) of this section.

(2) *Basic disallowance amount*. If a State's overpayment rate for a fiscal year, adjusted as described in paragraph (e)(1) of this section, exceeds the national standard for the fiscal year, the amount of the basic disallowance shall be the product of—

(i) The Federal share of the State's total AFDC payments for the fiscal year;

(ii) The difference between the State's adjusted overpayment rate and the national standard for the fiscal year; and

(iii) The ratio of the amount obtained in paragraph (e)(2)(ii) of this section, to the national standard.

(3) *Reduction of the basic disallowance amount for overpayment recoveries*. A State's basic disallowance

amount for a fiscal year shall be reduced to reflect AFDC overpayment recoveries by the State. The amount of the reduction shall be the product of—

(i) The Federal share of payments recovered in the fiscal year; and

(ii) The ratio of the amount obtained in paragraph (e)(2)(ii) of this section, to the State's adjusted overpayment rate.

(4) *Reduction for improvement in child support collections*. If a State's child support collection rate is greater than the national child support collection rate for the fiscal year, or is greater than the average of the State's child support collection rates for the three preceding fiscal years, the State's disallowance amount shall be further reduced. The amount of the reduction shall be the product of—

(i) The amount of the basic disallowance calculated in paragraph (e)(2) of this section minus the amount of the reduction calculated in paragraph (e)(3) of this section, and

(ii) The larger of—

(A) The ratio of the difference between the State and the national child support collection rate, to the national child support collection rate for the fiscal year; or

(B) The ratio of the difference between the State's child support collection rate for the fiscal year and the State's average child support collection rate for the preceding three fiscal years, to the State's average child support collection rate for the preceding three fiscal years.

(5) *Final disallowance amount*. The amount of disallowance imposed on the State by the Secretary shall be the amount of the disallowance calculated in paragraph (e)(2) of this section minus the sum of the amounts of reductions calculated in paragraphs (e)(3) and (e)(4) of this section.

Example: All references are to paragraph (e) of this section.

Fiscal year	State	National
Overpayment rate	8.0%	6.0%
Underpayment rate	2.8%	3.0%
Federal share of—		
Total AFDC payments	\$5,000,000	(1)
Total AFDC overpayment recoveries	5,000	(1)
AFDC child support collection rate	16.0%	12.0%
Average AFDC child support collection rate for preceding 3 years.....	14.0%	(1)

Calculation:

1. State adjusted overpayment rate, paragraph—
(e)(1) = $8.0 - (3.0 - 2.8) = 7.8\%$
2. Basic disallowance amount, paragraph—
(e)(2)(i) = \$5,000,000
(e)(2)(ii) = $7.8 - 6.0 = 1.8\%$
(e)(2)(iii) = $1.8 / 6.0 = 0.30$
Amount = $\$5,000,000 \times 1.8\% \times 0.30 = \$27,000$
3. Reduction for overpayment recoveries, paragraph—
(e)(3)(i) = \$5,000
(e)(3)(ii) = $1.8 / 7.8 = 0.231$
Amount = $\$5,000 \times 0.231 = \$1,155$
4. Reduction for improvement in child support collections, paragraph—
(e)(4)(i) = $\$27,000 - \$1,155 = \$25,845$
(e)(4)(ii)(A) = $(16.0 - 12.0) / 12.0 = 0.333$
(e)(4)(ii)(B) = $(16.0 - 14.0) / 14.0 = 0.143$
Since 0.333 is larger than 0.143, then the—
Amount = $\$25,845 \times 0.333 = \$8,606$
5. Final disallowance, paragraph—
(e)(5) = $\$27,000 - (\$1,155 + \$8,606) = \$17,239$

(f) *Disallowance notification and payment schedule.* The Department shall notify the States with overpayment rates above the national standard of their imposed disallowances (with a target date of 60 calendar days after the release of the error rates for the fiscal year).

(1) A State subject to a disallowance shall pay the amount of its disallowance within 45 calendar days of the date of the notification, or negotiate an agreement with the Department to repay the disallowance with interest in calendar quarterly installments over a period not to exceed 30 months beginning not later than the first calendar quarter after the date of the receipt of the notification.

(2) If a State fails to pay the amount of the imposed disallowance as specified in paragraph (f)(1) of this section, the Department shall reduce the Federal matching funds otherwise payable to the State under the Social Security Act by amounts sufficient to recover the amount of disallowance with interest.

(3) Interest on the unpaid amount of the State's disallowance shall accrue at the overpayment rate established under section 6621(a)(1) of the Internal Revenue Code of 1986 beginning 45 calendar days after the date the State receives notice of the disallowance. If a subsequent appeal by the State is decided in the State's favor, the Department shall repay to the State all payments made with interest from the date payment is received at the same accrued rate applicable to unpaid disallowances.

(g) *Administrative review of disallowances.* A State may appeal the imposition of the disallowance to the Departmental Appeals Board in writing within 60 calendar days after the receipt of the notification described in paragraph (f). The Board shall consider

the State's appeal in accordance with 45 CFR part 16.

(1) The Board shall not review, but shall incorporate by reference in its disallowance determination, the decisions on difference cases made by the Quality Control Review Panel or the Secretary.

(2) If the Board does not decide an appeal within 90 calendar days after the date on the State's notice of appeal, interest on the unpaid disallowance amount shall be suspended beginning with the 90th calendar days and ending on the date of the Board's final decision, except to the extent of that the Board finds that the State caused or requested the delay.

(h) *Judicial review of disallowances.* A State may appeal a decision by the Departmental Appeals Board, including a decision incorporated by the Board on a difference case, to the Federal district court within 90 calendar days after the date of the decision by the Board. Court review shall be on the record established in the Departmental Appeals Board review and shall be in accordance with the standards of review prescribed by title 5, U.S.C., section 706(2), subparagraphs (A) through (E).

§205.44 [Reserved]

[FR Doc. 91-14343 Filed 6-14-91; 8:45 am]
BILLING CODE 4150-04-M

Office of Child Support Enforcement**45 CFR Part 304**

RIN 0970-AA86

Child Support Enforcement Program; Prohibition of Federal Funding for Costs of Guardians Ad Litem

AGENCY: Office of Child Support Enforcement (OCSE)/HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Federal regulations to prohibit Federal funding under the Child Support Enforcement (IV-D) program for costs of guardians ad litem appointed to represent minors in IV-D actions. This change would make clear in regulation OCSE policy that costs of guardians ad litem are general State costs and are, therefore, not eligible for Federal financial participation (FFP).

DATES: Consideration will be given to comments received by August 16, 1991.

ADDRESSES: Send comments to Director, Office of Child Support Enforcement, Family Support Administration, 370 L'Enfant Promenade, SW., 4th floor,

Washington, DC 20447. Attention: Director, Policy and Planning Division, Mail Stop: OCSE/PPD. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Cohen at (202) 401-5366.

SUPPLEMENTARY INFORMATION:**Paperwork Reduction Act**

This regulation contains no information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Statutory Authority

This regulation is proposed under the authority granted to the Secretary by section 1102 of the Social Security Act (the Act). Section 1102 of the Act requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Background

The Child Support Enforcement Program was established under Title IV-D of the Act for the purpose of establishing paternity and obtaining and enforcing the support obligations owed by absent parents. Each State must have in effect an approved State IV-D plan which complies with the Federal standards incorporated in the Act and in OCSE regulations. Federal funding at the applicable matching rate is available for services and activities made pursuant to an approved Title IV-D State plan which are determined by the Secretary to be necessary expenditures.

Federal regulations at § 304.10 provide that as a condition for FFP, the provisions of 45 CFR part 74 which establish uniform administrative requirements and cost principles shall apply to all grants made to States under the IV-D program. Guidance for determining which services and activities meet the necessary expenditure test is provided by the Office of Management and Budget's (OMB) Circular A-87, "Cost Principles for State and Local Governments". Section C.1.a, made applicable here by 45 CFR 74-171, provides that allowable costs must "(b)e necessary and reasonable for proper and efficient administration of the grant programs, be allowable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall

responsibilities of State [or] local * * * governments."

If the context of the IV-D program, expenditures are considered general State expenses if they are incurred as a result of general State requirements which are neither dependent on nor confined to the IV-D program.

Therefore, any costs which result from services and activities which were not instituted solely for IV-D child support enforcement purposes would not be reimbursed. In the past, requests for reimbursement of costs for legislative expenditures, certain judicial costs, and costs for incarceration of delinquent obligors were denied because these costs are general State expenses.

Recently, States have requested FFP for costs of guardians ad litem to represent minors in IV-D litigation. For the most part, these States have general State laws which require that guardians ad litem must be appointed in any actions brought against a minor, including a minor defendant (e.g., putative father). The generally understood purpose of a guardian ad litem is to provide legal counsel. Black's Law Dictionary defines a guardian ad litem as a person "appointed by the court to prosecute or defend, in behalf of an infant or incompetent, a suit to which he is a party, and such guardian is considered an officer of the court to represent the interests of the infant or incompetent in the litigation." Although we agree that there may be a necessary duty to be performed by a guardian ad litem in the general sense, the primary issue to consider in the context of IV-D funding is whether the costs of guardians ad litem are appropriately the responsibility of the IV-D program or a general State expense required to carry out the overall responsibilities of State and local governments. As discussed in more detail below, we do not believe that the costs of guardians ad litem are necessary and reasonable costs associated with the proper and efficient administration of the Title IV-D program. This regulation proposes to add these costs to the list of expenditures for which FFP is not available.

Regulatory Provisions

Examples of circumstances in which a court may appoint a guardian ad litem include actions in which a child sues his parent, such as for injuries sustained due to the parent's negligent operations of a motor vehicle; or cases involving sterilization of a mentally retarded minor on a parent's petition. If a parent or general guardian is unavailable or is in conflict with the child, the court may appoint, in accordance with common

law practice, someone to represent the interests of the infant in the grievance or cause of action. For example, in child custody disputes between parents, most States, either by statute or case law, afford the court discretion to appoint a guardian ad litem to represent the children, who, although not named parties, may have a substantial stake in the outcome of the case.

Other common examples of when courts typically appoint guardians ad litem are when a minor child has an interest in an insurance policy, an inheritance, a workers' compensation claim, or the ownership of a bank account. Additionally, courts have appointed guardians ad litem to protect the interests of children called as witnesses in their parents' divorce action.

In nearly every State, child abuse and neglect that a guardian ad litem be appointed for the child in all civil judicial proceedings arising from a report of abuse or neglect. Hence, juvenile and family courts, before whom these issues are adjudicated, routinely appoint guardian ad litem to represent the minor children involved.

These examples illustrate that the use of guardian ad litem is not restricted to IV-D purposes. In fact, States customarily engage guardians ad litem on a routine basis in a variety of contexts where the interests of children may be affected by the actions taken or results accomplished. These are general state expenses which arise from a basic recognition that the child's interests in many actions may differ from those of its parents or the State. As a result, laws provide that children are entitled to legal counsel when a vital interest of theirs is being litigated. Therefore, the costs of guardians ad litem would be incurred in the absence of the IV-D program. We believe these costs are a generally responsibility of State or local governments.

Accordingly, we propose to amend 45 CFR 304.23 by adding a new paragraph (k) which would prohibit Federal funding for costs of guardians ad litem appointed to represent minors in IV-D actions.

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this proposed rule does not constitute a "major" rule for the following reasons:

(1) The annual effect on the economy would be less than \$100 million;

(2) This rule would not result in a major increase in costs or prices for consumers, individual industries,

Federal, State or local government agencies, or geographic regions; and

(3) This rule would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Although this proposed rule prohibits Federal funding for certain costs, we expect the additional costs to States to be less than \$100 million.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments which are not considered small entities under the Act.

List of Subjects in 45 CFR Part 304

Child support, grant programs/social programs.

(Catalog of Federal Domestic Assistance Programs No. 93.023, Child Support Enforcement Program)

Dated: March 13, 1991.

Jo Anne B. Barnhart,
Director, Office of Child Support
Enforcement.

Dated: May 10, 1991.

Louis W. Sullivan,
Secretary.

PART 304—[AMENDED]

For the reasons discussed above, we propose to amend 45 CFR part 304 as follows:

1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396(o), 1396b(p), 1396(k).

2. 45 CFR 304.23 is amended by republishing the introductory text and by adding a new paragraph (k) to read as follows:

§ 304.23 Expenditures for which Federal financial participation is not available.

Federal financial participation at the applicable matching rate is not available for:

* * * * *

(k) The costs of guardians ad litem appointed to represent minors in IV-D actions.

[FR Doc. 91-14334 Filed 6-14-91; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 89-532; RM-7010]

Radio Broadcasting Services; Brawley and El Centro, CA**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule; dismissal of.

SUMMARY: This document dismisses a petition filed on behalf of Brawley Broadcasting Company, license of Station KWST(FM), Brawley, California, based upon the lack of an expression of interest in pursuing the proposal by the petitioner. See 54 FR 50003, December 4, 1989. With this action, the proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-532, adopted May 31, 1991, and released June 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14368 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-597, RM-7118 and RM-7321]

Radio Broadcasting Services; Wiggins and D'Iberville, MS**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document is a Request for Supplemental Information from John F. White ("petitioner"), permittee of Station WOTC, Channel 250C2, Wiggins,

Mississippi, on his proposal to change the community of license for Channel 250C2 from Wiggins to D'Iberville, Mississippi, and modify his construction permit accordingly. See 55 FR 326, January 4, 1990. Petitioner is requested to provide information to show whether D'Iberville is deserving of a first local service or whether it should be credited with all of the aural services licensed to the Biloxi-Gulfport, Mississippi Urbanized Area. No additional counterproposals may be submitted since an opportunity for filing counterproposals has been provided.

DATES: Comments must be filed on or before August 5, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Lisa C. Wilson, Fisher, Wayland, Cooper & Leader, 1255-23rd Street NW., suite 800, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Request for Supplemental Information, MM Docket No. 89-597, adopted May 30, 1991, and released June 12, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14369 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-152; RM-7085, RM-7092, RM-7225, RM-7352, RM-7437 and RM-7714]

Radio Broadcasting Services; Pontotoc, Winona, Coffeeville, and Rienzi, MS, and Bolivar, Middleton, Selmer, and Ramer, TN**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

SUMMARY: This document is issued in response to six separately filed, conflicting petitions for FM allotments and channel substitutions in Mississippi and Tennessee. See Supplemental Information, *infra*.

DATES: Comments must be filed on or before August 5, 1991, and reply comments on or before August 20, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Rod Callahan, President, Tupelo Communications, Inc., 20 Emerson Street, Crafton, Pittsburgh, Pennsylvania 15205

Billy J. Crabb, Middleton Broadcasters, 27 Edgemont, Tupelo, Mississippi 38801

Coffeeville Broadcasters, Ltd., 1210 South 12th Street, Gadsden, Alabama 35901

M. Scott Johnson, Catherine M. Grofer, Gardner, Carton & Douglas, 1001 Pennsylvania Avenue NW., suite 750-N, Washington, DC 20004 (Counsel for Slatton-Quick Co., Inc.). John A. Borsari, Borsari & Kump, 900 Seventeenth Street NW., suite 900, Washington, DC 20036 (Counsel for State Line Broadcasting).

Jack W. Ivy, Rt. 1, Box 419, Belmont, Mississippi 38827.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-152, adopted May 30, 1991, and released June 12, 1991. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street NW., Washington, DC 20036, (202) 452-1422.

Tupelo Communications, Inc., licensee of Station WSEL(FM), has requested the substitution of Channel 244C1 for Channel 244A at Pontotoc, Mississippi, and modification of the license for Station WSEL(FM) to specify Channel 244C1. There is a site restriction 17.7 kilometers northeast of the community at coordinates 34-23-00 and 88-53-40. To accommodate Channel 244C1 at Pontotoc, we shall propose the substitution of Channel 264A for 244A at Bolivar, Tennessee, Station WMOD, at coordinates 35-15-00 and 88-53-28, and the substitution of Channel 236A for 244A at Winona, Mississippi, Station WONA(FM) at coordinates 33-29-34 and 89-45-17. Middleton Broadcasters has proposed the allotment of Channel 264C3 to Middleton, Tennessee, as that

community's first local service. There is a site restriction 6.3 kilometers northeast, at coordinates 35-06-37 and 88-50-43. Slatton Quick Company, Inc., requests the substitution of Channel 264A for 288A at Selmer, Tennessee, and modification of the license for Station WXOQ to specify Channel 264A at coordinates 35-13-11 and 88-40-23. State Line Broadcasting proposes the allotment of Channel 264C3 to Ramer, Tennessee, as that community's first FM broadcast service. There is a site restriction 2.2 kilometers northwest, at coordinates 35-05-00 and 88-38-24. Coffeeville Broadcasters, LTD., proposes the allotment of Channel 236A to Coffeeville, Mississippi, as that community's first local service. The coordinates for Channel 236A are 33-58-36 and 89-40-30. Jack W. Ivy proposes the allotment of Channel 267A to Rienzi, Mississippi, as that community's first local service. The coordinates for Channel 267A are 34-46-00 and 88-31-42. In accordance with § 1.420(g) of the Commission's Rules, we will not accept expressions of interest or require the petitioners to state the availability of

alternate channels for the Pontotoc substitution.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-14370 Filed 6-14-91; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 56, No. 116

Monday, June 17, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 91-076]

Availability of Environmental Assessment and Finding of No Significant Impact for Field Testing of a New Recombinant Derived Live Pseudorabies Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environmental assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service concerning its authorization given to SyntroVet, Inc., to conduct limited field trials of a veterinary biological product, for a new recombinant derived live pseudorabies vaccine. The assessment indicates that the field testing of the live recombinant derived pseudorabies vaccine will not have a significant impact on the environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

DATES: June 17, 1991.

ADDRESSES: Copies of the environmental assessment and findings of no significant impact are available for public inspection at Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director,

Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to its authorization to conduct limited field trials of a new recombinant derived live pseudorabies vaccine under the Virus-Serum-Toxin Act (VSTA) (21 U.S.C. 151 *et seq.*) produced by SyntroVet, Inc.

Under the VSTA, before a veterinary biological product can be licensed, it must be shown to be pure, safe, potent, and efficacious. Field testing is necessary in order to satisfy vaccine safety requirements as a prerequisite to licensing of the live virus vaccine under the VSTA. In the course of reviewing the testing protocol for the recombinant derived pseudorabies vaccine, APHIS assessed the impact on the environment of authorizing the manufacturer to conduct field testing of the product in six States as set forth in the environmental assessment.

The environmental assessment and finding of no significant impact provides the public with documentation of APHIS' review and analysis of environmental effects which may be associated with the gathering of information in these limited field trials.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. The new SyntroVet pseudorabies vaccine is attenuated. Genetic engineering procedures were used to produce four gene deletions in the genome of the Iowa strain. One deletion destroyed the viral thymidine kinase (TK) gene, the function of which is required for viral replication in host nervous system tissue and pathogenic effects. In addition, the second deletion removed portions of the internal and terminal repeat regions, also producing an attenuating effect. These deletions reduced toxicity of the virus in comparison with the wild type virus.

Animals vaccinated with the new SyntroVet pseudorabies vaccine can be differentiated serologically from animals infected with wild type virus. Two

additional deletions in the new vaccine destroyed genes coding for viral glycoprotein X (gpX or gpG) and glycoprotein 1 (gp1 or gpE). Destruction of these genes eliminated the potential for host antibody production to these two glycoproteins in vaccinated animals. Antibodies reactive to these proteins, however, were detected after challenge with wild type virus in both previously vaccinated and control animals. This provides a serological method for differentiation between vaccinated and infected hosts, a capability which will facilitate epidemiological studies.

2. The new SyntroVet pseudorabies vaccine is both safe and efficacious. The vaccine virus was shown to be avirulent in pigs and other susceptible species and yet fully capable of eliciting protective immunity against challenge with wild type pseudorabies vaccine in swine vaccinated at three days of age.

3. The new SyntroVet pseudorabies virus is stable. Reversion to virulence was not observed in backcross studies during three sequential passages of the new SyntroVet pseudorabies virus isolated from the respiratory tract of susceptible infected piglets. In addition, backpassages of virus was successful only when virus was expanded in cell culture, but not when actual respiratory secretions were used as inoculum.

4. The new SyntroVet pseudorabies vaccine is non-pathogenic to man. This conclusion is based on the fact that wild type parent virus is not pathogenic to man. Since the genome of the new SyntroVet pseudorabies virus is deficient (four gene deletions) in comparison with wild type virus, it is reasonable to conclude that the new SyntroVet pseudorabies virus is also nonpathogenic to man.

5. The new SyntroVet pseudorabies virus is not oncogenic. It is genetically deficient in comparison to the parental wild type virus, which is widely distributed in nature and contains no known oncogene or cancer-causing substance.

6. The new SyntroVet pseudorabies vaccine is derived from the same parental strain closely related to a licensed pseudorabies vaccine construct which has been safely used since 1987. Ten million doses of this vaccine have been distributed, and to date, no adverse findings have been reported.

Based on the foregoing, APHIS has determined that the field testing of the new recombinant derived live pseudorabies vaccine would have no significant impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*); (2) Regulations of the Council for Environmental Quality for implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 12th day of June 1991.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 91-14336 Filed 6-14-91; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Supplement to Final Environmental Impact Statement Siuslaw National Forest Land and Resource Management Plan for Oregon Dunes National Recreation Area, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare a Supplement to the 1990 Final Environmental Impact Statement (EIS) for the Siuslaw National Forest Land and Resource Management Plan (The Plan). The EIS Supplement will consider a range of alternatives for managing the Oregon Dunes National Recreation Area (ODNRA), a part of the Siuslaw National Forest. Current management direction for the ODNRA is contained in a ODNRA plan issued in May of 1979 which was incorporated unchanged into The Plan. Any change in management direction for the ODNRA will result in amending The Plan. The Record of Decision for The Plan specifies that the ODNRA management direction revision is to be completed by March 1993.

Alternatives considered will include a no-action alternative which would continue current management direction. Other alternatives will consider differing levels and mixes of management activities and programs. They will be based on issues identified in preliminary scoping with interested

publics, agency employees, and other federal, state and local entities. The ODNRA is located on the central Oregon coast between the communities of Florence and Coos Bay/North Bend within Lane, Douglas, and Coos counties.

The agency invites written comments on the scope of this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope and implementation of this proposal must be received by July 17, 1991.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Ranotta McNair, Area Ranger, Oregon Dunes National Recreation Area, Reedsport OR.

FOR FURTHER INFORMATION CONTACT:

Questions and comments about this Supplement should be directed to Mike Harvey, Project Leader, Oregon Dunes National Recreation Area, 855 Highway Avenue, Reedsport, OR 97467; phone (503) 271-3611.

SUPPLEMENTARY INFORMATION: Congress established the Oregon Dunes National Recreation Area on March 23, 1972 to provide for:

the public outdoor recreation use and enjoyment of certain ocean shorelines and dunes, forested areas, fresh water lakes, and recreational facilities in the State of Oregon by present and future generations and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters . . .

The ODNRA is comprised of 32,185 acres, of which approximately 26,000 acres are within the National Forest lands system; the remaining acres are a mix of state, county and private lands. The ODNRA includes 38 miles of ocean beach, with about 14,000 acres of non-vegetated sand. The ODNRA hosts approximately two million visitors each year and accommodates a wide variety of outdoor recreation activities. It features unique sand dunes ecosystems as well as a wide variety of other ecosystem types within the relatively small land base. Water resources include 32 freshwater lakes, two major rivers (Siuslaw and Umpqua) and three smaller streams (Siltcoos, Tahkenitch, and Tenmile). Facilities include 14 fee campgrounds, 21 day use or staging areas, approximately 25 miles of trails and the ODNRA headquarters in Reedsport.

Public participation will be especially important in the planning process. The Forest Service will be seeking information, comments, and assistance from Federal, state, and local agencies,

and other individuals or organizations who may be interested in or affected by the proposed actions. This information will be used in preparation of the EIS Supplement. The participation will start with scoping which includes:

1. Identifying potential issues;
2. Identifying issues to be analyzed in depth;
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental process;
4. Identifying project information needs;
5. Exploring additional alternatives;
6. Identifying potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions); and
7. Determining potential cooperating agencies and task assignments.

The public will be asked to assist in review of alternatives and environmental consequences in the draft Supplement to the EIS. Public comments on the draft Supplement will be used to develop the final Supplement.

The draft Supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review July 1992. Copies of the draft Supplement will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment.

EPA will publish a notice of availability of the draft Supplement in the *Federal Register*. The comment period on the draft Supplement will be 90 days from the date the EPA notice appears in the *Federal Register*. It is very important that those interested in the management of the ODNRA participate at that time.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Supplement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft Supplement. Comments may also address the adequacy of the draft Supplement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First,

reviewers of a draft Supplement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environment objections that could be raised at the draft Supplement stage but that are not raised until after completion of the final Supplement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final Supplement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comment on the draft Supplement should be as specific as possible.

The final Supplement is scheduled to be completed March 1993. In the final Supplement, The Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft Supplement and applicable laws, regulations, and policies considered in making the decision regarding this proposal. John F. Butruille, Regional Forester, Pacific Northwest Region, is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR 217).

Dated: June 7, 1991.

Charles F. Krebs,

Acting Regional Forester.

[FR Doc. 91-14297 Filed 6-14-91; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Economic and Employment Opportunities for Minorities and Women at the New Denver Airport, CO.; Briefing Forum

June 12, 1991.

AGENCY: Commission on Civil Rights.

Place: Radisson Hotel, 1550 Court Place, Denver, Colorado.

Time and Date: Thursday, June 20, 1991, 9 a.m.-9:30 p.m.; Friday, June 21, 1991, 9 a.m.-1:00 p.m.

Status: Open to the public.

MATTER TO BE CONSIDERED: Briefing Forum on Economic and Employment Opportunities for Minorities and Women at the New Denver Airport.

Time and Date: Thursday, June 20, 1991, 9 a.m.-9:30 p.m.; Friday, June 21, 1991, 1 p.m.-4:45 p.m.

CONTACT PERSON FOR MORE

INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Emma Monroig,

Solicitor.

[FR Doc. 91-14388 Filed 6-14-91; 8:45 am]

BILLING CODE 8335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Antarctic Marine Living Resources Conservation and Management Measures.

Form Number: NOAA Forms 88-211, 88-211A, 88-211B, and 88-211-C; OMB-0648-0194.

Type of Request: REquest for revision of a currently approved collection.

Burden: 4 respondents; 48 reporting hours; average hours per response—12 hours.

Needs and Uses: The requirements are pursuant to Antarctic Marine Living Resources Act (1984) regulating harvesting in and importing from the Antarctic. Forms/Logbooks will be used to collect information from an anticipated four respondents for the conservation/management of resources and to meet treaty obligations of the Convention on the Conservation of Antarctic Marine Living Resources.

Affected Public: Individuals, business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230. Written

comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 11, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-14299 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-CW-M

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Travel and Tourism Administration (USTTA).

Title: Industry Survey.

Form Number: Agency-none; OMB.

Type of Request: New.

Burden: 2500 respondents; 834 burden hours. Average minutes per response is 20.

Needs and Uses: This survey is being conducted to have the travel and tourism industry evaluate the programs and services provided by USTTA. Results will allow USTTA to determine the value of programs/services and where improvements can be made. OMB will receive input on how the industry feels USTTA should be funded.

Affected Public: The travel and tourism industry.

Frequency: One time only.

Respondent's Obligations: Voluntary.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-3271, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 12, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-14300 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration**[A-570-814]****Initiation of Antidumping Duty Investigation: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China****AGENCY:** Import Administration, International Trade Administration, Commerce.**EFFECTIVE DATE:** June 17, 1991.**FOR FURTHER INFORMATION CONTACT:** David C. Smith, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3798.**Initiation***The Petition*

On May 22, 1991, U.S. Fittings Group, an ad hoc trade association, filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings). In accordance with 19 CFR 353.12, the petitioner alleges that imports of butt-weld pipe fittings from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry. U.S. Fittings Group supplemented its petition on June 7, 1991.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the U.S. industry producing butt-weld pipe fittings. If any interested party, as described in 19 CFR 353.2(k) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner based United States price (USP) on November 1990 price quotations for butt-weld pipe fittings produced in the PRC, which were obtained from a representative of a trading company. The prices petitioner obtained were quoted CIF West Coast of the United States. Petitioner reduced USP for ocean freight, marine insurance, and brokerage based on the difference between customs value and CIF value,

as reported in the Department's IM-145 statistics for 1990.

Petitioner, alleging that the PRC is a nonmarket economy (NME) country within the meaning of section 773(c) of the Act, based foreign market value (FMV) on three methodologies. Method (1) bases FMV on the factors of production of one of the petitioning firms and values those factors in Thailand and, where surrogate information was not reasonably available for overhead and packing, in the United States. Method (2) employs the factors of production of one of the petitioning firms and values those factors in India and, where surrogate information was not reasonably available for overhead and packing, in the United States. Petitioner also included the statutory minimums of ten percent for general expenses and eight percent for profit in methods (1) and (2). Method (3) bases FMV on Thai export prices to the United States.

The Department has not accepted methods (1) and (3) contained in the petition as the basis for FMV because in recent cases India has been found to be more comparable to the PRC than Thailand, pursuant to section 773(c)(1)(B). We have accepted methods (2) for purposes of this initiation. Based on this method, petitioner alleges dumping margins ranging from 30.8 to 182.9 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on butt-weld pipe fittings from the PRC and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of butt-weld pipe fittings from the PRC are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Pursuant to section 771(18) of the Act and based on prior investigations, the

PRC is an NME. Parties will have the opportunity to comment on this issue and whether foreign market value should be based on prices or costs in the NME in the course of this investigation. The Department further presumes, based on the extent of central control in an NME, that a single antidumping duty margin is appropriate for all exporters. Only if NME exporters can demonstrate an absence of central government control with respect to the pricing of exports, both in law and in fact, will they be entitled to separate, company-specific margins. (See, Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588, May 6, 1991) for a discussion of the information the Department considers in this regard).

In accordance with section 773(c), FMV in NME cases is based on NME producers' factors of production (valued in a market economy country). Absent evidence that the PRC government has selected which factories produce for the United States, for purposes of the investigation we intend to base FMV only on those factories in the PRC which produce butt-weld pipe fittings for export to the United States.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (14 inches), imported in either finished or unfinished form. Unfinished butt-weld pipe fittings that are not machined, not tooled and not otherwise processed after forging are not included in the scope of this investigation. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by July 8, 1991, whether there is a reasonable indication that imports of butt-weld pipe fittings from the PRC are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make

its preliminary determination on or before October 29, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 11, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-14356 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-802]

Industrial Belts and Components and Parts From Italy; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, (hereinafter referred to as industrial belts) from Italy. The review covers one manufacturer and exporter of this merchandise to the United States, and the period February 1, 1989 through May 31, 1990. As a result of the review, the Department has preliminarily determined that a dumping margin exists.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Jeffrey Laxague, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1989, the Department of Commerce ("the Department") published in the *Federal Register* (54 FR 25313) the antidumping duty order on industrial belts from Italy. On June 29, 1990, the petitioner requested that we conduct an administrative review of the February 1, 1989 through May 31, 1990 period. We published a notice of initiation of the antidumping administrative review on July 26, 1990

(55 FR 30490). The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act") (19 U.S.C. 1675).

Scope of the Review

Imports covered by the review are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Italy. The covered merchandise consists of V-belts and synchronous industrial belts used for power transmission. These include V-belts and synchronous belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links.

This review excludes conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the period of review, the merchandise was classifiable under Harmonized Tariff System ("HTS") subheadings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remain dispositive.

The review covers the shipments of one manufacturer and exporter of industrial belts from Italy to the United States and the first review period, beginning on February 1, 1989 and ending on May 31, 1990.

United States Price

In calculating the United States price, the Department used purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act, as appropriate. United States price was based on the packed f.o.b., c.i.f., or ex works price to unrelated purchasers in, or for exportation to, the United States.

We made adjustments of ESP sales for ocean freight, foreign inland and marine insurance, U.S. and foreign inland freight, U.S. and foreign brokerage and handling charges, U.S. import duties, cash discounts, commissions, repacking in the United States, warranties, credit expenses, inventory carrying expenses, and indirect selling expenses. No adjustments were made to purchase price sales.

Foreign Market Value

In calculating foreign market value, the Department used home market price as defined in section 773 of the Tariff Act since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed c.i.f. or f.o.b. price to unrelated purchasers in the home market. We made adjustments, where appropriated, for inland freight and insurance, rebates, cash discounts, technical service expenses, inspection, quality control and testing expenses, credit expenses, and other direct selling expenses, differences in cost attributable to differences in physical characteristics of the merchandise, and difference in packing. We made further adjustments, where applicable, for indirect selling expenses to offset U.S. commissions and U.S. selling expenses deducted in ESP calculations, but not exceeding the amount of those U.S. commissions or indirect selling expenses. No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists:

Period of review	Margin (percent)
2/1/89-5/31/90	80.47

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested parties may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice or the first workday thereafter.

Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individuals differences between United States price and foreign market

value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided by section 751(a)(1) (19 U.S.C. 1675 (a)(1)) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin shall be required. The cash deposit rate for all other exporters/producers shall be 80.47 percent for shipments of industrial belts covered by this review. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Commerce regulations (19 CFR 353.22(c)(5)).

Dated: June 11, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration

[FR Doc. 91-14358 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DA-M

[A-570-807]

Postponement of Final Antidumping Duty Determinations: Oscillating Fans and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Steven Lim, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at (202) 377-4087.

POSTPONEMENT: On June 3 and June 4, 1991, respectively, Durable Electrical Metal Factory Ltd./Parawind Ltd./Paragon Industries (Durable), a respondent in the oscillating fans investigation accounting for a significant proportion of exports of the subject merchandise, and CEC Electrical Manufacturing (International) Co., Ltd./CEC Industries (Shenzhen) Ltd./CEC (USA) Texas Group, Inc. (CEC), and Wing Tat Electric Manufacturing Co., Ltd./China Miles Co., Ltd. (Wing Tat), respondents in the ceiling fans investigation accounting for a significant proportion of exports of the subject merchandise, requested that the Department postpone the final determinations in accordance with section 735(a)(2) of the Tariff Act of

1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)). Accordingly, we are postponing the date of the final determinations until not later than October 18, 1991.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than September 9, 1991, and rebuttal briefs no later than September 16, 1991. In accordance with 19 CFR 353.38(b), we will hold public hearings, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the oscillating fans and ceiling fans hearings will be held on September 19, 1991, at 9 a.m. and 1:30 p.m., respectively, at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearings 48 hours before the scheduled time.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: June 11, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 91-14360 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-087]

Portable Electric Typewriters From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 5, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Canon, Inc., and the period May 1, 1987 through April 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results. No comments were received.

The final margin for Canon, Inc., is 88.85 percent.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S.

Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 14080) the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters (PETS) from Japan (45 FR 30618, May 9, 1980). We have now completed this administrative review, in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of non-automatic PETS from Japan that do not incorporate a calculating mechanism. The merchandise is currently classified under Harmonized Tariff System (HTS) item numbers 8469.21.00 and 8469.29.00. During the review period, this merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item number 678.0510 and, in some cases, under TSUSA item number 678.0540. HTS and TSUSA numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of Japanese PETS to the United States, Canon, Inc. (Canon), and the period May 1, 1987 through April 30, 1988.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. No comments were received.

Final Results of the Review

Canon declined to respond to the Department's questionnaire for the May 1, 1987-April 30, 1988, period. In a letter to the Department, Canon acknowledged that, as a result, the Department could use the best information otherwise available (BIA) for Canon for this period. We have used as BIA the highest rate for a responding firm for this period. (See Portable Electric Typewriters from Japan, Final Results of Antidumping Duty Administrative Review (56 FR 14072, April 5, 1991).) We have determined the final margin to be:

Manufacturer	Period of review	Margin (percent)
Canon	05/01/87-04/30/88	88.85

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margin will be required for Canon, Inc. For any shipments of this merchandise manufactured or exported by any of the remaining known manufacturers/exporters not covered in this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms. For any future entries of this merchandise from a new exporter, whose first shipments occurred after April 30, 1988, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of estimated antidumping duties of 88.85 percent shall be required. These deposit requirements are effective for all shipments of portable electric typewriters (including automatic portable electric typewriters and portable electric typewriters with calculating mechanisms) entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 4, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 91-14359 Filed 6-14-91; 8:45 am]
BILLING CODE 3510-DS-M

[A-549-807]

Initiation of Antidumping Duty Investigation: Certain Carbon Steel Butt-Weld Pipe Fittings From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT: Michelle A. Frederick, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0656.

Initiation

The Petition

On May 22, 1991, U.S. Fittings Group, an ad hoc trade association filed with the Department of Commerce (the Department) an antidumping duty petition on behalf of the United States industry producing certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings). In accordance with 19 CFR 353.12, the petitioner alleges that imports of butt-weld pipe fittings from Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry. U.S. Fittings Group supplemented its petition on June 7, 1991.

The petitioner has stated that it has standing to file the petition because it is an interested party, as defined in 19 CFR 353.2(k), and because it has filed the petition on behalf of the U.S. industry producing butt-weld pipe fittings. If any interested party, as described in 19 CFR 353.2(k) (3), (4), (5), or (6), wishes to register support for, or opposition to, this investigation, please file written notification with the Assistant Secretary for Import Administration.

United States Price and Foreign Market Value

Petitioner based United States Price (USP) on price quotations supplied in an affidavit by one of the U.S. producers. The affidavit states prices at which a Thai producer sold the subject merchandise for export to the United States in September, November, and December 1990. These prices are CIF, duty paid, and include importer's mark-up. Petitioner reduced USP for ocean freight, marine insurance, and brokerage based on the percentage difference between customs value and CIF value, as reported in the Department's IM-145 statistics for 1990. Petitioner has no information on the amount of the importer's mark-up and thus made no downward adjustment to USP. Petitioner also reduced USP for customs duties in accordance with section 772(d)(2)(A) of the Act.

Petitioner states that it had no reasonable means of obtaining home market or third country prices. Therefore, petitioner based foreign market value (FMV) on constructed value (CV), in accordance with section 773(e) of the Act. Petitioner's estimate of FMV is based on one of the petitioning firm's costs of manufacture, adjusted to reflect Thai costs for seamless steel pipe, electricity, labor, and fringe

benefits. Petitioner valued overhead and packing on actual U.S. costs, as these were the only costs reasonably available to it. Furthermore, petitioner added the statutory minimums of ten percent for general expenses and eight percent for profit.

Petitioner alleges dumping margins ranging from zero to 52.6 percent.

Initiation of Investigation

Under 19 CFR 353.13(a), the Department must determine, within 20 days after a petition is filed, whether the petition properly alleges the basis on which an antidumping duty may be imposed under section 731 of the Act, and whether the petition contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on butt-weld pipe fittings from Thailand and find that it meets the requirements of 19 CFR 353.13(a). Therefore, we are initiating an antidumping duty investigation to determine whether imports of butt-weld pipe fittings from Thailand are being, or are likely to be, sold in the United States at less than fair value.

In accordance with 19 CFR 353.13(b) we are notifying the International Trade Commission (ITC) of this action.

Any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14.

Scope of Investigation

The products covered by this investigation are carbon steel butt-weld pipe fittings, having an inside diameter of less than 360 millimeters (14 inches), imported in either finished or unfinished form. Unfinished butt-weld pipe fittings that are not machined, not tooled and not otherwise processed after forging are not included in the scope of this investigation. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Preliminary Determination by ITC

The ITC will determine by July 8, 1991, whether there is a reasonable indication that imports of butt-weld pipe fittings from Thailand are materially injuring, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated. If affirmative, the Department will make its preliminary determination on or before October 29, 1991, unless the investigation is terminated pursuant to 19 CFR 353.17 or the preliminary determination is extended pursuant to 19 CFR 353.15.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: June 11, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-14357 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Large Diameter Pipe

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of Short-Supply Review and Request for Comments: Certain Large Diameter Pipe.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 11,200 net tons of certain large diameter pipe for the third quarter of 1991 under Paragraph 8 of the U.S.-Japan steel arrangement.

SHORT SUPPLY REVIEW NUMBER: 53.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101-221, 103 Stat. 1886 (1989) ("the Act"), and section 357.104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR § 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain large diameter pipe ("LDP"). On June 10, 1991, the Secretary received an adequate petition from Enron Corporation ("Enron") requesting a short-supply allowance under Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Steel Products for 11,200 net tons of American Petroleum Institute grade X-70 submerged arc welded steel pipe, 30 inches in diameter, and with a wall

thickness of 0.30 inch. This pipe is for the construction of the Transwestern Pipeline Expansion and must be imported during the third quarter of 1991. Enron is requesting a short-supply allowance for this material because domestic manufacturers of LDP are unable to meet Enron's needs for this pipe during the requested period, and its potential foreign supplier has no regular export licenses available during this period.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: 1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; 2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or 3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exists with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than July 10, 1991.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than June 24, 1991 to the Secretary of Commerce, Attention: Import Administration, Room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after June 24, 1991. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be

accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply number.

FOR FURTHER INFORMATION CONTACT: Mark B. Brechtel of Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230, (202) 377-1386 or (202) 277-0159.

Dated: June 12, 1991.

Marjorie A. Chorlins,
Acting Assistant Secretary for Import
Administration.

[FR Doc. 91-14409 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-DS-M

Technology Administration**National Medal of Technology Nomination; Deadline Extension**

AGENCY: Office of Technology Commercialization; Technology Administration, Commerce.

ACTION: Notice of extended deadline.

SUMMARY: This notice announces an extended deadline to accommodate nominations of individuals and/or companies for the National Medal of Technology. Nominations closed September 30, 1991 but will now be extended until October 30, 1991.

FOR FURTHER INFORMATION OR NOMINATION PACKAGES, CONTACT: Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue NW., Herbert C. Hoover Building, Room 4418, Washington, DC 20230 (202) 377-5572.

SUPPLEMENTAL INFORMATION: A nominee for the National Medal of Technology must be a U.S. Citizen; consist of up to four U.S. citizens who share an award jointly; or be a U.S.-owned company, defined as a partnership or corporation which carries out a commercial or industrial enterprise, and which is substantially owned by citizens of the U.S.

Nominations are solicited in two separate areas—contributions to the promotion of technology or contributions to the promotion of technological manpower. Selections for the promotion of technology will be focussed on:

- Technology transfer from public organizations;
- Promotion of advanced manufacturing technology;
- Companies best embodying technology management principles; and
- General product and process innovations.

Selections for the promotion of technological manpower will be for strengthening a technologically competent workforce through:

- Alleviation of technical workforce shortages; and
- Motivation and improved performance of the existing workforce.

Dated: June 10, 1991.

Deborah L. Wince-Smith,

Assistant Secretary for Technology Policy.

[FR Doc. 91-14361 Filed 6-14-91; 8:45 am]

BILLING CODE 3510-16-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Base Closure and Realignment Commission

ACTION: Announcement of Public Deliberation Meetings of the Defense Base Closure and Realignment Commission.

SUMMARY: Additional open public meetings of the Defense Base Closure and Realignment Commission will be held in Washington, DC and other locations in accordance with the following dates and times, and at specific meeting locations as shown, or to be determined and published subsequently in the *Federal Register*: Washington, DC: Monday, June 17, 9:30 a.m., room 334, Cannon House Office Building, First Street and Independence Ave., to receive congressional testimony and have public hearings on bases/installations newly added to the base closure and realignment list as follows: Staten Island Naval Station, Corps of Engineers, Fort Totten, Fort Hamilton, Fort Pickett, Fort A.P. Hill, Fort Buchanan, Indiantown Gap, Fort McCoy and MacDill Air Force Base; Monday, June 17, 1:30 p.m., Marines Recruit Training Depot, San Diego, CA, to receive testimony on the proposed realignment or closure of the Naval Training Center, San Diego, Marine Training Depot, San Diego, Long Beach Naval Shipyard, and Naval Station Treasure Island; Tuesday, June 18, 2:30 p.m., City Auditorium, San Angelo, Texas, to receive testimony on the proposed closure or realignment of Goodfellow Air Force Base; Thursday, June 20, 1 p.m., Plattsburgh Air Force

Base, N.Y., to receive testimony on the proposed closure or realignment of Plattsburgh Air Force Base; Friday, June 21, 3 p.m., Temple Theater, 8th Street and 24th Ave., Meridian, MS, to receive testimony on the proposed closure or realignment of Naval Air Station, Meridian; Friday, June 21, 9 a.m., Naval Air Station, Kingsville, to receive testimony on the proposed closure or realignment of Naval Air Station, Kingsville; Friday, Saturday and Sunday, June 28, 29 and 30, 9:30 a.m., Washington, DC, specific location to be determined, to conduct deliberations on base closures and realignments.

Less than 15 days notice is being given in some instances due to the inclusion on June 7 of additional installations and/or organizations for possible closure and realignment and the decision to hold public hearings on these additions prior to the statutorily mandated deadline.

FOR FURTHER INFORMATION:

Defense Base Closure and Realignment Commission, Mr. Cary Walker, Director of Communications and Public Affairs, 202-653-0823.

Dated: June 13, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14436 Filed 6-13-91; 1:52 pm]

BILLING CODE 3610-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Forms EIA-1, 3, 4, 5, 6, 7A, and 20 (Coal Program Package)

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the proposed extension of the EIA-1, 3, 4, 5, 6, 7A, and 20 (Coal Program Package) and solicitation of comments concerning proposed changes to the Coal Survey Forms.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. 3501 et seq.), conducts a pre-survey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection

requirements on respondents can be properly assessed. Currently, EIA is soliciting comments concerning the proposed revisions and a three year extension of approval for its coal forms. These forms include: EIA-1, "Weekly Coal Monitoring Report—General Industries and Blast Furnaces;" EIA-3, "Quarterly Coal Consumption Report—Manufacturing Plant;" EIA-4 "Weekly Coal Monitoring Report—Coke Plants;" EIA-5, "Coke Plant Report—Quarterly;" EIA-6, "Coal Distribution Report;" EIA-7A, "Coal Production Report;" and EIA-20, "Weekly Telephone Survey of Coal Burning Utilities."

DATES: Written comments must be submitted within 30 days of the publication of the notice. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to John G. Colligan, Energy Information Administration, EI-521, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (telephone number: 202-254-5465).

FOR FURTHER INFORMATION OR TO OBTAIN COPIES OF THE PROPOSED FORMS AND INSTRUCTIONS: Requests for additional information or copies of the forms and instructions should be directed to John G. Colligan at the address listed above.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275) and the Department of Energy Organization Act (Pub. L. No. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys that encompass each significant coal supply,

distribution and consumption activity in the United States.

II. Current Actions

EIA proposes an extension with changes to its existing collections. These changes will have little impact on respondent burden, better reflect current industry operations and respond to congressional, Federal and public data users' requirements. The proposed changes are summarized below:

1. EIA-3

a. Previous quarter's ending coal stockpile balance for verification will be pre-printed.

b. A question regarding the plant's capability to generate one megawatt or more of electricity to allow for the identification and removal of duplicate data occurring on the Forms EIA-3 and EIA-867, and to provide updates to the frame for the EIA-867, "Annual Nonutility Power Producer Report" will be added.

2. EIA-5

a. Previous quarter's ending coal stockpile balance for verification will be pre-printed.

b. A question regarding the plant's capability to generate one megawatt or more of electricity to allow for the identification and removal of duplicate data occurring on the Forms EIA-5 and EIA-867, and to provide updates to the frame for the EIA-867 will be added.

c. Questions on quantities of coal and coke purchased/transferred, and the amount of breeze used in the carbonization process will be added. This information is needed to clarify the reporting of coke production and coal consumption for coke production.

3. EIA-6

a. Change the coal usage category from Electric Utilities to Electric Generation, to include nonutility coal-fired power producers. The new data will more accurately reflect the amount of coal used in the United States to produce electricity.

4. EIA-7A

a. Section IV (Coal Quality) to ask for the Btu, ash, sulfur, and moisture content of the coal reported in section ILC Production Quantity and Value was added. The responder is given the option to complete Section IV directly on the form, or submit a copy of a proximate analysis report for a representative coal sample. The purpose of collecting these data is to obtain basic coal quality information needed in supply analyses and modeling in support of the National

Energy Strategy, Clean Air Act, and related policy and legislative programs.

b. Section III Productivity delete Part A. Employment and Part C. Coal Preparation. The following data elements will no longer be collected:

Part A

- Total Direct Labor Hours;
- Total Number of Production Days Worked;
- Average Number of Employees per Shift;
- Average Number of Shifts per day;
- Average Length of Production Shift;

Part B

- Percentage of coal prepared from underground mines;
- Percentage of coal prepared from surface mines;
- Total direct hours worked at preparation plant.

Employment and direct labor hours will be published using data collected by the Mine Safety and Health Administration under the "Quarterly Mine Employment and Coal Production Report", Form 7000-2.

III. Request for Comments

Prospective respondents and other interested parties should comment on the proposed extension and revisions. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form or forms your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions?

D. Public reporting burden (hours per response) for each of the following forms is shown below:

EIA-1=1.0 hrs.; EIA-3=0.5 hrs.; EIA-4=1.0 hrs.;

EIA-5=1.0 hrs.; EIA-6=1.5 hrs.; EIA-7A=1.21 hrs.; and EIA-20=1.0 hrs.

How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form(s)?

E. What is the estimated cost of completing these form(s), including the direct and indirect costs associated with the data collections? Direct costs should include all costs, such as administrative costs, directly attributable to providing this information.

F. How can the form(s) be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, please specify the agency, the data element(s), and the means of collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form(s)?

B. For what purpose would you use the data? Be specific.

C. How could the form(s) be improved to better meet your specific needs?

D. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths?

EIA is also interested in receiving comments from persons regarding their views on the need for the information contained in the Coal Program Package.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form(s); they also will become a matter of public record.

Statutory Authorities: Sections 5(a), 5(b), 13(b), and 52 of Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. §§ 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC June 11, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91-14352 Filed 6-14-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-390-000, et al.]

Idaho Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 7, 1991.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER91-390-000]

Take notice that on May 22, 1991, Idaho Power Company [Idaho] tendered for filing an amendment to its original filing dated April 19, 1991.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of Oklahoma

[Docket No. ER91-477-000]

Take notice that on June 4, 1991, Public Service Company of Oklahoma (PSO) tendered for filing amendments to its Facilities Agreement and its Transmission Service Agreement with Western Farmers Electric Cooperative

(WFEC), providing for changes in the various points at which PSO provides service to WFEC under the two Agreements.

PSO requests an effective date of June 27, 1986 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served upon WFEC and the Oklahoma Corporation Commission.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

3. Wisconsin Public Service Corporation

[Docket No. ER91-472-000]

Take notice that on June 3, 1991, Wisconsin Public Service Corporation (WPSC) tendered for filing an extension of its Limited Term Capacity Agreement with Manitowoc Public Utilities (MPU), City of Manitowoc, Manitowoc County, Wisconsin. WPSC and MPU have also agreed to amend the agreement to reduce the capacity MPU will purchase and to vary the demand charge under the contract.

WPSC requests that the Commission waive its advance filing requirements to allow the extension to take effect on June 1, 1991.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Company

[Docket No. ER91-220-000]

Take notice that on June 3, 1991, Northern Indiana Public Service Company (Northern Indiana) tendered for filing an amendment to its original filing as initial rate schedules, Service Schedule L and Service Schedule M and tendered for filing as an amendment to its Rate Schedules, the Ninth Supplemental Agreement to the Interconnection Agreement with the Wabash Valley Power Association, Inc. (Wabash Valley).

Service Schedule L—Provides for the supply of Intermediate-term Capacity and Energy Northern Indiana to Wabash Valley; Service Schedule M—provides for the Unit Peaking Capacity and Energy Northern Indiana to Wabash Valley.

The proposed effective date of the service under Service Schedule L is January 1, 1990, the date from and after which Wabash Valley requested service thereunder. The proposed effective date of service under Service Schedule M is January 1, 1992.

Northern Indiana's filing requests waiver of Commission requirements as may be required to permit the proposed rate schedule filings to become effective

pursuant to a mutual agreement of the two parties. Wabash Valley concurs in Northern Indiana's requests.

Copies of this filing have been served upon Wabash Valley and the Indiana Utility Regulatory Commission.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Montaup Electric Company

[Docket No. ER91-475-000]

Take notice that on June 3, 1991 Montaup Electric Company (Montaup or Company) filed its Conservation and Load Management Annual Report required under the provisions of its Conservation and Load Management (CLM) Adjuster Mechanism as authorized under the terms of a Settlement Agreement approved by the Commission on January 23, 1991 in FERC Docket No. ER90-247.

The Conservation and Load Management Annual Report provides detailed information concerning: The operation of the C&LM adjuster mechanism during fiscal-year 1 (May 1, 1990 through April 30, 1991); describes the procedures Montaup implemented to ensure interested parties had an opportunity to work with the Company in the development of its C&LM programs through a cooperative process; presents detailed information on the current and proposed C&LM program offerings; proposes a C&LM Surcharge resulting from the reconciliation of the first twelve-month period under the C&LM adjuster mechanism and associated monthly billing amounts; and, presents a proposed C&LM Revenue Requirement for the second twelve-month period under the C&LM adjuster mechanism and associated monthly billing amounts.

During the first twelve-month period under the C&LM adjuster mechanism, Montaup provided C&LM service to the Blackstone Valley Electric Company and the Eastern Edison Company. Starting with the second twelve-month period, Montaup will also provide C&LM service to the Newport Electric Corporation.

Based upon the information contained in the Company's filing, the C&LM Revenue Requirement is projected to increase from its current level of \$6,986,000 to \$13,878,500. The allocation formula contained within the C&LM tariff provisions apportions the C&LM revenue requirement as follows: Blackstone Valley Electric Company \$4,069,176; Eastern Edison Company \$8,049,530; Newport Electric Corporation \$1,759,794. The reconciliation of the first twelve-month period under the C&LM adjuster mechanism produces a revenue

deficiency, including interest, of \$1,813,336 and results in the following proposed surcharge amounts: Blackstone Valley Electric Company \$592,017; Eastern Edison Company \$1,221,319. Montaup proposes that the above amounts be approved for billings effective for the period May 1, 1991 through April 30, 1992.

The filing has been served on the state and Attorney General in Massachusetts and Rhode Island, on Montaup's M-Rate customers and the Conservation Law Foundation of New England, Inc.

Comment date: June 21, 1991, in accordance with Standard Paragraph E at the end of this notice.

6. Exxon Chemical Company and Exxon Company, U.S.A.

[Docket No. QF89-41-001]

On May 30, 1991, Exxon Chemical Company at P.O. Box 100, Baytown, Texas 77522-0100, and Exxon Company, U.S.A., at P.O. Box 3950, Baytown, Texas 77522-3950 submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Baytown, Texas and will include twelve gas turbine generators, and four steam turbine generators and supplementary fired heat recovery boilers. Thermal energy recovered from the facility will be utilized in Exxon's Olefins Plant and Exxon's refinery.

The original certification was issued on April 19, 1989 (47 FERC 62,047). The instant recertification is requested due to transfer of ownership and leaseback of the facility.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

7. Kanawha Valley Power Company

[Docket NO. ER91-306-000]

Take notice that Kanawha Valley Power Company, on June 5, 1991, submitted for filing supplemental data supporting the return on common equity requested in its March 8, 1991, filing in this docket.

Kanawha states that a copy of the filing has been provided to the Public Service Commission of West Virginia, the Virginia State Corporate Commission and Appalachian Power Company.

Comment date: June 21, 1991, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14280 Filed 6-14-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-460-001, CP90-1375-000]

Pacific and Altamont Gas Transmission Companies; Availability of an Errata to the Final Environmental Impact Statement for the PGT/PG&E Expansion—Altamont Natural Gas Pipeline Projects

June 7, 1991.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) has made available an errata to the final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed in the above-referenced dockets, which was issued on May 24, 1991.

The errata contains two letters of comment on the draft environmental impact statement, and the staff's responses, which should have been published as part of the FEIS. One comment letter, from Mr. Tom Bell, was inadvertently excluded from the "Groups and Individuals" portion of the Comments/Responses Volume. The other letter, from the U.S. Environmental Protection Agency, was partially published and responded to in the "Federal Agencies" portion of the Comments/Responses Volume. This letter is being republished in its entirety.

The errata to the FEIS is available for public inspection in the FERC's Division of Public Information, room 3104, 941 North Capitol Street, NE., Washington, DC 20426. Copies have been mailed to all agencies, groups and individuals who received the FEIS.

Copies of the errata are also available from Mr. Mark C. Kalpin, PGT/PG&E Expansion Project Manager, or Mr. Laurence J. Sauter, Jr., Altamont Project Manager. Messrs. Kalpin and Sauter can be reached either at (202) 208-0918 or (202) 208-0205.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14277 Filed 6-14-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP91-2162-000, et al.]

Colorado Interstate Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP91-2162-000]

June 6, 1991.

Take notice that on June 3, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, CO, 80944, filed in Docket No. CP91-2162-000, a request pursuant to §§ 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act, to abandon a 150-foot portion of a 4-inch pipeline used to effectuate the sale and delivery of natural gas to several customers, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, CIG states that the 150-foot portion of the 4-inch line along with an existing parallel line is used for the delivery of gas to the Public Service Company of Colorado (PSCO), the City of Fort Morgan, Colorado (Fort Morgan), and Western Sugar Company (Western Sugar) in Morgan County, Colorado. PSCO, Fort Morgan and Western Sugar have consented to the proposed abandonment, as each will continue to receive service from the parallel line.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP91-2165-000]

June 6, 1991.

Take Notice that on June 3, 1991, Northern Natural Gas Company, Division of Enron Corp., (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-2165-000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate one new delivery point as a jurisdictional sales facility to accommodate natural

gas deliveries to Interstate Power Company (Interstate Power), under Northern's blanket certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is said that the sales through this delivery point would be under Northern's CD-1, SS-1, and PS-1 rate schedules to Interstate Power for resale to a community in the vicinity of Conger, Minnesota. It is further said that Interstate Power has requested installation of the delivery point due to the expansion of its delivery system into new areas.

Northern states that the proposed deliveries to Interstate Power at Conger would be served from the total firm entitlements currently assigned to the community of Albert Lea, Minnesota. Northern states further that Interstate Power has not requested that any firm entitlements be assigned to Conger.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP91-2155-000]

June 7, 1991.

Take notice that on May 31, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-2155-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided by Trunkline for Northern Natural Gas Company (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that it was authorized by Commission orders issued in Docket Nos. CP77-92 and CP77-17, as amended, to transport natural gas purchased by Northern from producers in the West Cameron area, offshore Louisiana, to various interconnections with United Gas Pile Line Company in St. Mary and LaSalle Parishes, Louisiana. Trunkline asserts that it also has the right to purchase up to 20 percent of the gas transported. Trunkline provides the transportation service pursuant to transportation and sales agreements dated October 27, 1976, as amended, and September 23, 1976, as amended which are on file with the Commission as Trunkline's Rate Schedules T-15 and T-17, respectively.

Trunkline further states that in accordance with the termination provisions of the two agreements,

Northern has requested by letter dated January 10, 1991, that Rate Schedule T-15 be terminated effective January 10, 1992, and by letter dated February 7, 1991, that Rate Schedule T-17 be terminated effective February 7, 1992.

Comment date: June 28, 1991, in accordance with Standard Paragraph F at the end of the notice.

4. Colorado Interstate Gas Company; Tennessee Gas Pipeline Company

[Docket No.'s CP91-2163-000; CP91-2166-000]
June 7, 1991.

Take notice that on June 3, 1991, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, and Tennessee Gas Pipeline

Company, P.O. Box 2511, Houston, Texas 77252 (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP86-589, *et al.* and Docket No. CP87-115-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.¹

¹ These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2163-000 (6-3-91)	K N Gas Marketing, Inc. (Marketer).	75,000 50,000 ¹ 18,250,000	TX, OK, KS, CO, WY.....	CO	4-1-91, TI-1, Interruptible.	ST91-8568-000, 4-7-91
CP91-2166-000 (6-3-91)	Endevco Oil & Gas Company (Marketer).	50,000 50,000 18,250,000	NY, MS.....	NY, PA	4-26-91, IT, Interruptible.	ST91-8820-000, 5-2-91

¹ CIG's quantities are in Mcf.

5. Tennessee Gas Pipeline Company

[Docket No. CP91-2137-000]

June 7, 1991.

Take notice that on May 31, 1991, Tennessee Gas Pipeline Company, (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP91-2137-000 an application with the Commission, pursuant to section 7(b) of the Natural Gas Act (NGA), for permission and approval to abandon its interruptible natural gas transportation service for Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application which is open to public inspection.

Tennessee states that it provides Texas Eastern, *inter alia*, a daily interruptible transportation service of up to 7,500 Mcf of natural gas under Tennessee's FERC Rate Schedule T-99, as authorized in Docket No. CP79-477, 10 FERC ¶61,068 (1989). Texas Eastern notified Tennessee on December 13, 1988, that it wished to terminate their transportation agreement, since the five-year primary term of the agreement had already expired. Tennessee also states that it has not delivered any natural gas under Rate Schedule T-99 to Texas Eastern since sometime prior to the December 13, 1988, termination letter. Tennessee, however, does not request a retroactive effective date for its proposed abandonment of interruptible transportation service for Texas

Eastern. No facilities are proposed to be abandoned.

Comment date: June 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

6. Paiute Pipeline Company

[Docket No. CP91-2103-000]

June 7, 1991.

Take notice that on May 23, 1991, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP91-2103-000, an application pursuant to sections 7(b) and 7(c) of the Commission's Regulations, for a certificate of public convenience and necessity authorizing the construction and operation of certain pressure, regulating, and measurement facilities along Paiute's northern Nevada jurisdictional transmission system and to abandon certain facilities, all as more fully set forth in the request, which is on file with the Commission.

Paiute contends that this proposal would enhance the design of certain segments of its system to avoid operational difficulties experienced during the 1990-91 heating season and to meet existing design day high priority requirements of Paiute's customers for natural gas. Paiute asserts that it has recently conducted an evaluation of the daily design capacity of its northern Nevada transmission system and has determined that due to high priority customer load growth and the

deterioration of some facilities, the design of facilities at four city gate locations on its system should be upgraded. Paiute alleges that upgrading the four city gate sales taps is required to insure delivery of existing contract volumes in the upcoming 1991-92 winter heating season.

Specifically Paiute proposes to rebuild measuring and regulating equipment facilities at four existing city gate locations on its interstate pipeline transmission as described below:

(1) Paiute's would upgrade by rebuilding its South Tahoe Lateral measuring and regulating tap equipment serving CP National, near Tahoe Village, Nevada;

(2) Replace Paiute's existing Reno lateral regulating equipment at Paiute's Reno City Gate Nos. 2 and 3 serving Sierra Pacific Power, located in Washoe County, Nevada;

(3) On its Elko lateral, Paiute proposes to relocate its Elko city gate delivery point to Southwest Gas Corporation (Southwest) in Elko County, Nevada from its existing location to the location of the primary pressure regulating station approximately 3½ miles upstream on the lateral. Paiute proposes to install new upgraded measurement equipment at the new location and rebuild and upgrade the regulating equipment at the primary regulating station.

(4) In conjunction with relocating the Elko city gate delivery point, Paiute proposes to abandon by sale to Southwest, at the net book value, 3.49 miles of 6-inch pipeline between the present Elko city gate delivery point and the proposed new delivery point at the location of the primary pressure regulating station and the present Elko city gate. The pipeline to be abandoned is located between milepost 137.20 and milepost 140.69 on the Elko lateral.

Paiute contends that the abandonment by sale to Southwest would not result in any reduction of service to Southwest or its customers. Paiute alleges that the proposed rebuilding and upgrading of the measurement and regulating facilities at the delivery point, would enhance Paiute's ability to deliver gas through the delivery point to Southwest.

The total cost of the proposed construction activities is estimated by Paiute to be \$437,876. Paiute contends that the proposed construction activities would be financed through treasury funds. The abandonment by sale to Southwest would be at a selling price of approximately \$67,000 which is the net book value of the facilities.

Paiute requests expeditious approval of the proposal in order to ensure that the necessary facilities can be constructed and placed into operation to meet design day requirements for the upcoming winter heating season.

Comment date: June 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

7. Texas Eastern Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Tennessee Gas Pipeline Company

[Docket No.'s CP91-2189-000, CP91-2190-000, CP91-2191-000]

June 7, 1991.

Take notice that on June 5, 1991, Applicants filed prior notice requests with the Commission in the above-referenced dockets pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.²

² These prior notice requests are not consolidated.

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day, and annual volumes; the service initiation date; and related ST docket number of the 120-day transaction under § 284.223 of the Commission's Regulations, has been provided by Applicants, as summarized in appendix A. Applicants' addresses and transportation blanket certificates are shown in appendix B.

Texas Eastern Transmission Corporation (Texas Eastern) also states that it would construct and operate, pursuant to its blanket certificate issued in Docket No. CP82-535-000 (21 FERC ¶ 62,199), a metering facility on its 24-inch mainline in Butler County, Ohio, in order to deliver natural gas to the City of Hamilton, Ohio. Texas Eastern also states that the City of Hamilton would construct nonjurisdictional facilities consisting of 8,700 feet of 8-inch gas main distribution to connect to the proposed delivery point.

Comment Date: July 22, 1991, in accordance with Standard Paragraph C at the end of this notice.

Docket No.	Shipper name (type)	Peak day, average day, annual Dth	Receipt points ¹	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-2189-000	City of Hamilton, Ohio (Local Distributor).	Firm: 20,000 20,000 7,300,000 Interruptible: 15,000 15,000 5,475,000	AL, AR, IL, IN, KY, LA, OLA, MS, MO, NJ, NY, OH, PA, TN, TX, WV.	OH.....	5-14-91, IT-1, Interruptible.. June 3, 1991 FT-1, Firm.	
CP91-2190-000	Consolidated Fuel Corporation (Marketer).	130,000 10,000 3,650,000	MS.....	GA, MD, NJ, NC, PA, SC, WV.	6-8-90, IT, Interruptible.	ST91-8648, 4-20-91.
CP91-2191-000	Meridian Marketing and Transmission (Marketer).	500 500 182,500	NY.....	PA.....	4-18-91, IT, Interruptible..	ST91-8716, 5-1-91.

¹ Offshore Louisiana is shown as OLA.

Appendix B

Applicants' addresses	Blanket docket
Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252.....	CP87-115-000.
Texas Eastern Transmission Corporation, P.O. Box 2521, Houston, Texas 77252-2521.....	CP88-136-000, as amended.
Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251.....	CP88-328-000.

8. Natural Gas Pipeline Company of America

Docket No.'s [CP91-2177-000,³ CP91-2178-000, CP91-2179-000, CP91-2180-000, CP91-2181-000, CP91-2182-000, CP91-2183-000]

Take notice that on June 4, 1991, Natural Gas Pipeline Company of

³ These prior notice requests are not consolidated.

America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under Natural's blanket certificate issued in Docket No. CP86-582-000 pursuant to

section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket

numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's regulations has been provided by Natural and is included in the attached appendix.

Natural also states that it would provide the service for each shipper under an executed transportation agreement, and that Natural would charge rates and abide by the terms and

conditions of the referenced transportation rate schedule(s).

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Shipper name	Peak day, ¹ avg. annual	Points of		Start up date, rate schedule	Related ² dockets
			Receipt	Delivery		
CP91-2177-000	Midcon Marketing Corp....	30,000 30,000 10,950,000	LA, TX.....	LA, TX.....	4-1-91, FTS	ST91-8748-000
CP91-2178-000	V.H.C. Gas Systems, L.P.	23,000 23,000 8,395,000	LA.....	LA.....	4-1-91, FTS	ST91-8743-000
CP91-2179-000	V.H.C. Gas Systems, L.P.	23,000 23,000 8,395,000	LA, TX.....	LA, TX.....	4-1-91, FTS	ST91-8745-000
CP91-2180-000	Williams Gas Marketing Company.	50,000 30,000 10,950,000	AR, MO, CO, NE, IA, NM, IL, OK, KS, TX, LA, Off TX, Off LA.	OK, NM, LA, IL, CO, KS, TX, Off TX, Off LA.	4-1-91, ITS.....	ST91-8662-000
CP91-2181-000	Total Minatome Corp.....	25,000 15,000 5,475,000	Off LA	Off LA	4-1-91, ITS.....	ST91-8741-000
CP91-2182-000	Conoco, Inc.....	5,000 2,500 912,000	AR, MO, CO, NE, IA, NM, IL, OK, KS, TX, LA, Off TX, Off LA.	OK, IL, LA, NM, KS, CO, TX, Off TX, Off LA.	4-1-91, ITS.....	ST91-8666-000
CP91-2183-000	MidCon Marketing Corp...	50,000 30,000 10,950,000	AR, MO, CO, NE, IA, NM, IL, OK, KS, TX, LA, Off TX, Off LA.	OK, IL, LA, NM, KS, CO, TX, Off TX, Off LA.	4-1-91, ITS.....	ST91-8664-000

¹ Quantities are shown in MMBtu unless otherwise indicated.

² The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

9. Ozark Gas Transmission System

[Docket No. CP91-2187-000]

June 7, 1991.

Take notice that on June 4, 1991, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed a request with the Commission in Docket No. CP91-2187-000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to add delivery point facilities near Searcy, White County, Arkansas, under its blanket certificate issued in Docket No. CP85-134-000, pursuant to section 7 of the NGA, all as more fully set forth in the application which is open to public inspection.

Ozark proposes to construct and operate additional delivery point facilities at the eastern terminus of its pipeline near Searcy, White County, Arkansas, in order to facilitate its natural gas deliveries to Columbia Gas Transmission Corporation (Columbia) and Tennessee Gas Pipeline Company (Tennessee) via new facilities to be built by Arkla Energy Resources. Ozark states that it would replace existing pipe with 500 feet of 24-inch pipe and install additional metering equipment at an estimated cost of \$500,000. Ozark does not propose any volumetric changes in its service for Columbia and Tennessee, as authorized in Opinion Nos. 125 and 125-A, 16 FERC ¶61,099 and 17 FERC ¶61,024, respectively. Ozark also states

that its tariff does allow such changes in delivery facilities.

Comment date: July 22, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Western Gas Interstate Company

[Docket Nos. CP91-2126-000, CP91-2127-000, CP91-2128-000, CP91-2129-000 (Not Consolidated)]

June 7, 1991.

Take notice that on May 30, 1991, Western Gas Interstate Company (Western), 9130 Jollyville Road, suite 150, Austin, Texas 78759-7273, filed applications in Docket Nos. CP91-2126-000, CP91-2127-000, CP91-2128-000 and CP91-2129-000, pursuant to section 3 of the Natural Gas Act and § 153.1 through 153.8 of the Commission's Regulations, and Executive Order Nos. 10485 and 12038 and §§ 153.10 through 153.12 of the Commission's Regulations. The applications seek authorization to construct, operate and maintain facilities located near El Paso, Texas for the exportation of gas to Juarez, Mexico, all as more fully set forth in the applications on file with the Commission and which are open for public inspection.

Western, a wholly-owned subsidiary of Southern Union Company, seeks approval to operate, maintain and connect certain gas transmission facilities which connect to three separate export points located in the

City of El Paso, Texas, described by Western as:

- (1) Del Norte #1—Measuring Station near Ascarate Park;
- (2) Del Norte #2—Measuring Station near Delta Street; and
- (3) Del Norte #3—Measuring Station near Stanton Street and Santa Fe.

Western says that these facilities were previously subject to a Presidential Permit issued by the Federal Power Commission in 1969 in Docket No. CP69-236. Western also says that it intends to modify these measurement and regulating stations near the international boundary. Western says that the facilities are essential in order to deliver the gas to the United States/Mexico border.

Western says that a review of a previously issued Presidential Permit for the same facilities was limited to a certain expired transaction, and does not encompass the transactions described in these current applications. Western says that new section 3 authorizations and a new Presidential Permit must be issued authorizing the operation of the facilities in order for Western says that new section 3 authorizations and a new Presidential Permit must be issued authorizing the operation of the facilities in order for Western to render exportation services for CMEX Energy, Inc. (CMEX) and Texas International Gas & Oil Company (Texas International).

Western, in Docket No. CP91-2126-000 (section 3) and Docket No. CP91-2128-000 (Presidential Permit), says that it has contracted with CMEX to transport up to 50,000 MMBtu per day of natural gas on a firm basis and up to 30,000 MMBtu per day on an interruptible basis for delivery to facilities owned by Gas Natural de Juarez S.A. and Juarez Gas Co. S.A. de C.V. (Juarez Facilities). Western will receive gas from El Paso Natural Gas Company (EPNGC) on behalf of CMEX for redelivery by Western at the international border to the Juarez Facilities. Western says that the gas delivered by Western will be purchased from CMEX by P.M.I. Commercial International S.A. de C.V., (PMI) a wholly owned subsidiary of Petroleos Mexicanos (PEMEX), for initial use in an electric generating plant. Western says that the export/transportation services for CMEX will be pursuant to two Service Agreements, dated May 7, 1991, which are filed as Exhibit D to Docket No. CP91-2126-000.

Western, in Docket No. CP91-2129-000 (section 3) and Docket No. CP91-2127-000 (Presidential Permit), says that it has entered into an agreement with Texas International providing for transportation of up to 30,000 Mcf per day of natural gas on an interruptible basis for delivery to the Juarez Facilities. Western would receive gas from EPNGC on behalf of Texas International for redelivery by Western at the international border to the Juarez Facilities. Western's understanding is the gas delivered by it will be purchased from Texas International by PMI. Western says that the export/transportation services for Texas International will be pursuant to a Precedent Agreement, dated October 27, 1989, which is filed as Exhibit D to Docket No. CP91-2129-000.

Western has requested that expedited action be taken on its applications so that service can begin by July 1, 1991, because the use of natural gas in the electric generation plant, in place of the use of No. 6 fuel oil, will aid in reducing atmospheric pollution, which may affect the quality of the air on both sides of the border.

Comment date: June 28, 1991, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Northern Natural Gas Company

[Docket No. CP91-2164-000]

June 7, 1991.

Take notice that on June 3, 1991, Northern Natural Gas Company (Northern Natural), 1400 Smith Street,

P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP91-2164-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act for authorization to install and operate a new delivery point and appurtenant facilities as jurisdictional sales and transport facilities to accommodate jurisdictional natural gas deliveries to Great Plains Natural Gas Company (Great Plains), under the certificate issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Specifically, Northern requests authority to construct and operate a new delivery point for Great Plains to accommodate jurisdictional natural gas sales and transportation under Northern's CD-1, SS-1, FT-1 and IT-1 rate schedules for redelivery to Minnesota Corn Processors and the Marshall Minnesota Industrial Park. Northern states that Great Plains has requested installation of the delivery point to accommodate a load growth due to a large industrial user expanding their facilities. Northern also indicates that Great Plains will receive approximately 1.5 Bcf annually through the proposed delivery point, and that the volumes proposed to be delivered to Great Plains for Minnesota Corn Processors and the Marshall Minnesota Industrial Park will initially be interruptible transportation volumes.

Comment date: June 28, 1991, in accordance with Standard Paragraph C at the end of this notice.

12. Panhandle Eastern Pipe Line Company

[Docket No. CP91-2167-000]

June 7, 1991.

Take notice that on June 3, 1991, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77001, filed in Docket No. CP91-2167-000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon a gas exchange agreement between Panhandle El Paso Natural Gas Company (El Paso) and K N Energy, Inc. (K N), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle proposes to abandon a gas exchange agreement dated June 17, 1974, as amended, with El Paso and K N. It is stated that the exchange service was authorized by the Commission in Docket Nos. CP75-314 (Panhandle), CP75-1 (El Paso), and CP75-27 (K N). It is indicated

that the exchange is performed under Panhandle's Rate Schedule E-4, El Paso's Rate Schedule X-34, and K N's Rate Schedule X-3. Panhandle states that El Paso and K N provided notice to Panhandle by letters dated January 4, 1991, and December 7, 1990, respectively, of their desire to terminate the exchange agreement. Panhandle further indicates that upon approval of the abandonment proposed herein, it would make the appropriate corresponding changes to its FERC Gas Tariff, Original Volume No. 2, to reflect the abandonment of Rate Schedule E-4.

Panhandle states that K N has requested permission and approval for the abandonment of this exchange service in Docket No. CP91-1732-000, filed April 8, 1991. It is also stated that El Paso has or will soon file to abandon this exchange service.

Comment date: June 28, 1991, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is

required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14279 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-3-1-001]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 11, 1991.

Take notice that on June 6, 1991, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Substitute Twenty Sixth Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1991. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers and to substitute corrected information to its quarterly PGA filing originally tendered on May 31, 1991.

Alabama-Tennessee has also requested a limited waiver on a continuing basis of § 154.22 of the Commission's Regulations with regard to the filing of its quarterly PGA. Alabama-Tennessee proposes that it be permitted to file revisions to its quarterly PGA filing three days after the filing of the revised quarterly PGA of its upstream gas supplier, Tennessee Gas Pipeline Company ("Tennessee"), and that its filing become effective on less than thirty days' notice, on the same effective date as that of Tennessee's revised PGA.

Alabama-Tennessee has requested any necessary waivers of the Commission's regulations in order to permit the tariff sheets to become effective as proposed.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 91-14254 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-161-000, RP89-172-000,
CP91-687-000 and CP90-2275-000]

ANR Pipeline Co., Rescheduled Informal Settlement Conference

June 7, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on June 24, 1991, at 1 p.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, continuing through June 25, for the purpose of exploring the possible settlement of the above-referenced dockets. The informal settlement conference scheduled for June 11 and 12, 1991, has been cancelled.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael A. Cotleur at (202) 208-1076 or James A. Pederson at (202) 208-2158.
Lois D. Cashell,
Secretary.

[FR Doc. 91-14271 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-170-000]

Gas Research Institute; Annual Application

June 10, 1991.

Take notice that on June 3, 1991, Gas Research Institute (GRI) filed an application requesting advance approval of its 1992-1996 Five-Year Research and Development (R&D) Plan, 1992 R&D Program, and the funding of its R&D activities for 1992, pursuant to the Natural Gas Act and the Commission's Regulations, particularly 18 CFR 154.38(d)(5) (1990).

In its application, GRI proposes to increase its contract obligations (debt) from \$202 million in 1991 to \$213 million in 1992, and cash outlays (debt retirement) from \$195 million in 1991 to \$200 million in 1992. GRI's application seeks to collect \$187,383,000 through jurisdictional rates and charges during the 12 months ending December 31, 1992. This \$187.4 million, along with a draw-down of GRI's cash balance during 1992, from \$28.4 million to \$16.1 million, will provide the necessary cash to fund the 1992 R&D program.

GRI's proposed unit cost of its 1992 R&D Program is 1.46 cents per Dth (i.e., 1.51 cents per Mcf). This Annual R&D Funding Unit is proposed to be applied to the services included in GRI's Program Funding Services in 1991, which include jurisdictional, direct sale and intrastate volumes of GRI's members, estimated total 12,813,160 MDth.

In addition, GRI requests approval of funding for two "Class 3" end use R&D projects—Natural Gas Vehicles and Emissions Controls (Class 3 projects are those that would create a new use for natural gas in markets currently served predominantly by alternative fuels). A decision of the U.S. Court of Appeals for the District of Columbia Circuit, issued on April 19, 1991, *Process Gas Consumers Group v. FERC*, Case No. 89-1739 ("PGC"), vacated and remanded the portion of previous Commission orders that approved the funding of these projects, finding that the Commission's analysis was unreasonable and inconsistent with the standards established in *Process Gas Consumers Group v. FERC*, 866 F.2d 470 (D.C. Cir. 1989). GRI provides additional rationale and statistics purporting to support the net benefits of these projects to existing ratepayers.

GRI also suggests that new government initiatives for clean air and an expanded role for natural gas should lead the Commission to reassess its policy on a stabilized GRI program. GRI claims that an expansion of the gas

industry R&D program may be required and requests new funding guidelines from the Commission.

The Commission Staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on July 31, 1991. Comments on the Staff Report and GRI's application by all parties, except GRI, must be filed with the Commission on or before August 16, 1991. GRI's reply comments must be filed on or before August 30, 1991.

Any person desiring to be heard or to protest GRI's application, except for GRI members and state regulatory commissions, who are automatically permitted to participate in the instant proceedings as intervenors, should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's rules and regulations. All such motions or protests should be filed on or before June 28, 1991. All comments and protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room. Lois D. Cashell, Secretary.

[FR Doc. 91-14263 Filed 6-14-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ91-9-4-000]

Granite State Gas Transmission, Inc.; Changes in Rates

June 10, 1991.

Take notice that on June 5, 1991, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway Westborough, Massachusetts 01581-5039, filed First Revised Second Substitute Sixth Revised Sheet No. 21 in its FERC Gas Tariff, Second Revised Volume No. 1, containing changes in rates for effectiveness on July 1, 1991.

According to Granite State, the filing comprises its regular quarterly purchased gas cost adjustment based on projected gas costs and sales for the third quarter of 1991.

Granite State further states that the revised rates are applicable to its wholesale sales to its affiliated distribution company customers: Bay

State Gas Company and Northern Utilities, Inc.

Granite State states that copies of its filing were served upon its customers and the regulatory commissions of the states of Maine, New Hampshire and Massachusetts.

Any person desiring to be heard or to make and protest with reference to said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14275 Filed 6-14-91; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP84-13-007]

Michigan Consolidated Gas Co.; Refund Report

June 7, 1991.

Take notice that Michigan Consolidated Gas Company (MichCon), on May 30, 1991, tendered for filing with the Federal Energy Regulatory Commission its annual refund report filed in compliance with the Stipulation and Agreement in Docket No. RP84-13, which was approved by the Commission's order dated January 11, 1985.

MichCon states that the report consists of a summary page and nine supporting schedules which set forth the amounts refunded, by customer, including interest calculated as required under § 154.67(c) of the Commission's regulations. MichCon states that refunds were made on May 30, 1991.

MichCon states that copies of the refund report are being sent to each of ISD's customers and to the Michigan Public Service Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance

with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14272 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP88-2-011]

Northern Natural Gas Co., Division of Enron Corp.; Sale of Natural Gas

June 7, 1991.

Take notice that on May 9, 1991, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS-1, pursuant to the authorization granted by order in Docket No. CP88-2-000 issued March 11, 1988 (42 FERC 61,303).

(1) *Name of Buyer:* Enron Industrial Gas Company.

(2) *Location of Buyer:* Houston, Texas.

(3) *Affiliation between Northern and Buyer:* Enron Industrial Gas Company is a subsidiary of Enron Corporation; Northern Natural Gas Company is a subsidiary of Enron Corporation.

(4) *Term of Sale:* May 15, 1991, through April 30 1992, and month to month thereafter.

(5) *Estimated Total and Maximum Daily Quantities:* Daily Quantity : 300,000 MMBtu. Estimated Total: 9 Bcf per month.

(6) *Maximum sales rate:* \$2.34 per MMBtu. *Minimum sales rate:* \$1.20 per MMBtu. *Rate to be charged during billing period:* (A) Field area—\$1.20—\$1.45; (B) Market area—\$1.45—\$1.95.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying

contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14276 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-262-013]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

June 10, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on June 5, 1991 tendered for filing the revised tariff sheets listed on appendix A attached to the filing.

Panhandle states that on December 4, 1990, as clarified by the Commission's May 21, 1991 Order in the above-referenced proceedings, the Federal Energy Regulatory Commission (Commission) issued an order modifying and approving the partial uncontested Stipulation and Agreement and approving tariff sheets authorizing Panhandle to perform modified services for its Rate Schedule SG Customers and authorizing a transportation Rate Schedule SCT and a sales Rate Schedule SSS.

Panhandle further states that the revised tariff sheets are being submitted to comply with Ordering Paragraph (C) of the December 4, 1990 Order and the Commission's May 21, 1991 Order on rehearing.

Panhandle states that it is proposing a July 1, 1991 effective date for the revised tariff sheets.

Panhandle states that copies of its filing have been served on all jurisdictional sales customers, state commissions, and shippers. Copies also have been provided to the parties to the settlement referenced above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such protests should be filed on or before June 24, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14266 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT83-36-003]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

June 10, 1991.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on June 7, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of the following tariff sheets:

Fourth Revised Sheet No. 32-AM

First Revised Sheet No. 32-AQ.A

Third Revised Sheet No. 32-BQ

First Revised Sheet No. 32-BU.A

Panhandle states that these revised tariff sheets are being filed to comply with the Commission's Order on Order Nos. 497 and 497-A Compliance Filings dated May 23, 1991 in Docket No. MT88-36-000, 001 and 002, *inter alia*.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Panhandle states that copies of its filing were served on Panhandle's jurisdictional sales and transportation customers, state commissions and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14267 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01

[Docket No. MT88-2-004]

Questar Pipeline Co.; Tariff Filing

June 10, 1991.

Take notice that Questar Pipeline Company, on June 7, 1991 tendered for

filing and acceptance First Revised Sheet No. 63 and Original Sheet No. 63A to Original Volume No. 1-A of its FERC Gas Tariff.

Questar states that this filing is made pursuant to 18 CFR 154.63(a)(1) and in compliance with the Commission's May 23, 1991, order in Docket No. MT88-2-000, 001, 002 and 003.

Questar requests an effective date of July 7, 1991, for the proposed tariff sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14269 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-173-000]

South Georgia Natural Gas Co.; Proposed Changes to FERC Gas Tariff

June 10, 1991.

Take notice that on June 5, 1991, South Georgia Natural Gas Company ("South Georgia") tendered for filing the following tariff sheets to its FERC Gas Tariff. First Revised Volume No. 1, to be effective July 5, 1991:

Third Revised Sheet No. 16K
Third Revised Sheet No. 16N
Second Revised Sheet No. 16O
Second Revised Sheet No. 16CC.01
Second Revised Sheet No. 16DD
First Revised Sheet No. 16FF
First Revised Sheet No. 34H
Second Revised Sheet No. 34Q
Second Revised Sheet No. 34R
Fourth Revised Sheet No. 34U
Second Revised Sheet No. 34Y
First Revised Sheet No. 34Z
First Revised Sheet No. 42A
Second Revised Sheet No. 42C
First Revised Sheet No. 42J
Second Revised Sheet No. 42K
First Revised Sheet No. 42M
Second Revised Sheet No. 42O
First Revised Sheet No. 42V
Second Revised Sheet No. 42W

South Georgia states that the purpose of this filing is to make certain revisions to its transportation tariff (1) to delete all references to take-or-pay crediting as required by the Commission's Order No. 500-K issued in Docket Nos. RM87-34-065, *et al.* on April 4, 1991, (2) to revise the "on behalf of" certification for section 311 transportation services, (3) to require a prepayment to be submitted with requests for firm transportation service, and (4) to make certain other changes for operational and administrative efficiencies. Accordingly, South Georgia has submitted the revised tariff sheets listed above and has requested that the Commission make these sheets effective July 5, 1991.

South Georgia states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 17, 1991. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14264 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-171-000]

Southern Natural Gas Co.; Proposed Refund Plan

June 11, 1991.

Take notice that on May 30, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, in Docket No. RP91-171-000, requested the Commission to approve a proposed refund plan. Southern filed the plan as a result of a March 29, 1991 Order of the Office of the Chief Accountant (Docket No. FA89-48-000) which directed Southern to analyze its Account No. 253, Other Deferred Credits, and to file a refund plan since most of the refunds have been in Southern's Account No. 253 since 1963 awaiting Commission action.

Southern proposes to flow through to its customers refunds of \$2,865,395 in principal and interest from Southern's Account No. 253 by crediting its Account No. 191, Deferred Purchased Gas Cost. Southern states that it deferred flow through of the majority of these refunds awaiting a decision from the Commission regarding their proper accounting.

Additionally, Southern requests authorization to make direct refunds to two customers (Florida Gas Transmission Company and South Georgia Natural Gas Company) of \$185,675 in principal and interest from its Account No. 253.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1989)). All such protests should be filed on or before July 1, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14253 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-172-000]

Southern Natural Gas Co., Proposed Changes to FERC Gas Tariff

June 10, 1991

Take notice that on June 5, 1991, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective July 5, 1991.

Fifth Revised Sheet No. 30O
Third Revised Sheet No. 30W
First Revised Sheet No. 30W.1
Third Revised Sheet No. 30Z
First Revised Sheet No. 30Z.02
First Revised Sheet No. 30Z.09
First Revised Sheet No. 30Z.18
First Revised Sheet No. 30Z.19
First Revised Sheet No. 30Z.22
First Revised Sheet No. 30Z.24
Fifth Revised Sheet No. 31
First Revised Sheet No. 45R.01
Fourth Revised Sheet No. 45R.20
Fifth Revised Sheet No. 45R.23
Fourth Revised Sheet No. 45R.24
Third Revised Sheet No. 45R.27
Second Revised Sheet No. 45R.28
Third Revised Sheet No. 53L.40
Third Revised Sheet No. 53L.56

Southern states that the purpose of this filing is to take certain revisions primarily to its transportation tariff (1) to delete all references to take-or-pay crediting as required by the Commission's Order No. 500-K issued in Docket Nos. RM87-34-065, *et al.* on April 4, 1991, (2) to revise the "on behalf of" certification for section 311 transportation services, (3) to require a prepayment to be submitted with requests for firm transportation service, and (4) to make certain other changes for operational and administrative efficiencies. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested that the Commission make these sheets effective July 5, 1991.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before June 17, 1991. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14363 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT88-9-003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 10, 1991.

Take notice that on June 7, 1991, Texas Eastern Transmission Corporation (Texas Eastern) in compliance with the Commission's order issued May 23, 1991, in Docket Nos. MT88-9-000, 001 and 002, (May 23 Order) herewith submits for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Fourth Revised Sheet No. 305A
Third Revised Sheet No. 330A
Sixth Revised Sheet No. 492
Sixth Revised Sheet No. 505
Seventh Revised Sheet No. 520

Texas Eastern states that it is filing the above listed tariff sheets in compliance with Ordering Paragraph (B)(5) of the May 23 Order, which requires Texas Eastern to file revised tariff sheets containing the names and titles of operating personnel shared with Pan National Gas Sales, Inc., (Pan National) if any. Separately, Texas Eastern intends to seek rehearing of the referenced order as well as the companion order issued concurrently in Texas Eastern's Docket No. MG88-26-000, *et al.*, to the extent, among other things, that such orders hold Pan National to be a "marketing affiliate" of Texas Eastern when Texas Eastern does not conduct any "transportation transactions" with Pan National. Other than telephone equipment and mainframe computer system, Texas Eastern does not share any facilities or operating personnel with any of its marketing affiliates.

Texas Eastern states that ordering Paragraph (B)(15) of the May 23 Order requires Texas Eastern to include in its transportation request form the item required by § 250.16(b)(2)(xi) of the Commission's regulations. This item requires the shipper to list on its request form the state of the ultimate end user of the gas. Texas Eastern already has incorporated this requirement into the transportation request forms filed by Texas Eastern on October 31, 1990, which revised tariff sheets were approved to be effective December 1, 1990, by Commission order issued November 30, 1990 in Docket No. RP90-119-004.

Texas Eastern states that this filing is submitted without prejudice to Texas Eastern's rights on rehearing or in any judicial review proceeding or its position in this proceeding.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, all parties in Docket Nos. MT88-9-000, 001, 002, MG88-26-000, *et al.*, and all Rate Schedule IT-1 shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14278 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-109-002]

**Transwestern Pipeline Co.;
Compliance Filing**

June 7, 1991

Take notice that Transwestern Pipeline Company (Transwestern) on May 30, 1991 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective July 1, 1991

85th Revised Sheet No. 5
9th Revised Sheet No. 38
5th Revised Sheet No. 40
8th Revised Sheet No. 73
73rd Revised Sheet No. 74
9th Revised Sheet No. 75
3rd Revised Sheet No. 75A
11th Revised Sheet No. 76
5th Revised Sheet No. 76A
6th Revised Sheet No. 76B
6th Revised Sheet No. 76C
3rd Revised Sheet No. 76D
2nd Revised Sheet No. 76E
1st Revised Sheet Nos. 83-86A
9th Revised Sheet No. 133

Transwestern states that the above-referenced tariff sheets are being filed by Transwestern to comply with the April 30, 1991, Commission "Order Accepting and Suspending Alternate Tariff Sheets Subject to Conditions, Rejecting Primary Tariff Sheets, Amending Certificate Retroactively, Granting Abandonment, Denying Rehearing and Consolidating Proceedings" (Order). Transwestern notes that the filing also accepts the condition imposed by the Commission relating to the IS-1 sales program.

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary, specifically § 154.63 of its regulations, so as to permit the above listed tariff sheets to become effective July 1, 1991.

Transwestern asserts that copies of the filing were served on all parties entitled to service under rule 2010 of the Commission's rules of practice and procedures.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14273 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

**Trunkline Gas Company; Proposed
Changes in FERC Gas Tariff**

[Docket No. MT88-22-004]

June 10, 1991.

Take notice that Trunkline Gas Company (Trunkline) on June 7, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of the following tariff sheets: First Revised Sheet No. 9-CC.1 First Revised Sheet No. 9-DG.2

Trunkline states that these revised tariff sheets are being filed to comply with the Commission's Order on Order Nos. 497 and 497-A Compliance Filings dated May 23, 1991 in Docket Nos. MT88-22-000, 001, 002 and 003, *inter alia*.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

Trunkline states that copies of its filings were served on Trunkline's jurisdictional sales and transportation customers, state commissions and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14268 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT90-07-001]

Trunkline LNG Co.; Proposed Changes in FERC Gas Tariff

June 10, 1991.

Take notice that Trunkline LNG Company (TLC) on June 7, 1991 tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, six (6) copies of the following tariff sheets:

First Revised Sheet No. 79.1

First Revised Sheet No. 79.2

TLC states that these revised tariff sheets are being filed to comply with the Commission's Order on Order Nos. 497 and 497-A Compliance Filings dated May 23, 1991 in Docket Nos. MT90-07-000, *inter alia*.

The proposed effective date of the tariff sheets listed above is June 7, 1991.

TLC states that copies of its filing were served on TLC's jurisdictional customers, and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 18, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14270 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-226-002]

Valero Interstate Transmission Co.; Refund Report

June 7, 1991.

Take notice that Valero Interstate Transmission Company (Vitco), on May 31, 1991, tendered for filing with the Federal Energy Regulatory Commission its refund report setting forth the computations of refunds including interest made to each customer.

Vitco states that it has calculated the refund applicable to each customer for the period October 1, 1989 through April 30, 1991 based on the rates charged during this period and the rates

approved by the Commission letter order dated May 2, 1991.

Vitco states that a copy of the filing has been served upon the parties in the above captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's rules of practice and procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before June 14, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91-14274 Filed 6-14-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51764; FRL 3931-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice announces receipt of 34 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 91-261, February 25, 1991.
P 91-269, February 26, 1991.
P 91-779, July 10, 1991.
P 91-829, 91-830, July 20, 1991.
P 91-835, July 22, 1991.
P 91-847, 91-848, 91-849, July 31, 1991.

P 91-850, August 3, 1991.

P 91-851, 91-852, 91-853, 91-854, 91-855, 91-856, 91-857, 91-858, 91-859, 91-860, 91-861, 91-862, August 4, 1991.

P 91-863, 91-864, 91-865, 91-866, 91-867, 91-868, 91-869, 91-870, 91-871, 91-872, 91-873, 91-874, August 5, 1991.

Written comments by:

P 91-261, January 26, 1991.

P 91-269, January 27, 1991.

P 91-779, June 10, 1991.

P 91-829, 91-830, June 20, 1991.

P 91-835, June 22, 1991.

P 91-847, 91-848, 91-849, July 1, 1991.

P 91-850, July 4, 1991.

P 91-851, 91-852, 91-853, 91-854, 91-855, 91-856, 91-857, 91-858, 91-859, 91-860, 91-861, 91-862, July 5, 1991.

P 91-863, 91-864, 91-865, 91-866, 91-867, 91-868, 91-869, 91-870, 91-871, 91-872, 91-873, 91-874, July 6, 1991.

ADDRESSES: Written comments, identified by the document control number "(OPTS-51764)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., rm. L-100, Washington, DC, 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT:

David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, rm. EB-44, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 91-261

Manufacturer. Confidential.

Chemical. (G) Amine functional acrylic salt.

Use/Production. (G) Coating. Prod. range: Confidential.

P 91-269

Manufacturer. Confidential.

Chemical. (G) Phosphonic acid ester of aromatic epoxy.

Use/Production. (G) Despersively used coating, pretreatment solution. Prod. range: 10,000-24,000 kg/yr.

P 91-779

Manufacturer. King Industries, Inc.

Chemical. (G) Aromatic acid phosphate compound with amine.

Use/Production. (G) Coatings additive. Prod. range: Confidential ky/yr.

P 91-829

Importer. Hoechst Celanese Corporation.

Chemical. (G) Diazo naphthoquinone sulfonic ester.

Use/Import. (G) Photoactive agent for photoresist formulation. Import range: Confidential.

P 91-830

Importer. Hoechst Celanese Corporation.

Chemical. (G) Diazo naphthoquinone sulfonic ester.

Use/Import. (G) Photoactive agent for photoresist formulation. Import range: Confidential.

P 91-835

Importer. Confidential.

Chemical. (G) Metal arsenate.

Use/Import. (G) Commercial wood preservative ingredient. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 300 mg/kg species (rat).

P 91-847

Manufacturer. Rheox, Inc.

Chemical. (G) Polyamide resin.

Use/Production. (S) Additive for solvent-based paints. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5.0 g/kg species (rat). Eye irritation: slight species (rabbit). Skin irritation: negative species (guinea pig).

P 91-848

Manufacturer. Confidential.

Chemical. (G) Organic salt.

Use/Production. (G) Polymer intermediate. Prod. range: Confidential.

P 91-849

Importer. Powdertech Corporation.

Chemical. (G) Alkyd resin polymer.

Use/Import. (G) Open, nondispersive. Import range: 1,500-2,000 kg/yr.

P 91-850

Manufacturer. Confidential.

Chemical. (G) Siloxane-modified polyurethane polymer.

Use/Production. (S) Thickener for coatings. Prod. range: Confidential.

P 91-851

Importer. Confidential.

Chemical. (G) Phenoplastic sulfonic acid salt.

Use/Import. (S) Drying aid. Import range: Confidential.

P 91-852

Importer. Confidential.

Chemical. (G) Polymer of methyl methacrylate with mixed alkyl methacrylates.

Use/Import. (G) Open, nondispersive. Import range: Confidential.

P 91-853

Manufacturer. Confidential.

Chemical. (G) Ethan ammonium, *N,N,N*-trimethyl-2-(methyl-1-oxo-2-propyl)oxo-chloride polymer with 2-propenamide and *N,N,N*-trimethyl-2-(C1-oxo-2-propenyloxy)ethan ammonium chloride.

Use/Production. (G) Polymer utilized to separate means of flocculation solid particules from liquid slurry. Prod. range: Confidential.

P 91-854

Importer. Confidential.

Chemical. (G) Alkyl amine derivative.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-855

Importer. Confidential.

Chemical. (G) Alkyl amine derivative.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-856

Importer. Confidential.

Chemical. (G) Alkyl amine derivative.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-857

Importer. Confidential.

Chemical. (G) Alkyl amine derivative.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-858

Importer. Confidential.

Chemical. (G) Alkyl amine derivative.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-859

Importer. Confidential.

Chemical. (G) Alkyl amine derivative.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-860

Importer. Confidential.

Chemical. (G) Alkyl amine derivative.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-861

Importer. Confidential.

Chemical. (G) Alkyl amine derivative.

Use/Import. (G) Open, nondispersive use. Import range: Confidential.

P 91-862

Manufacturer. Ashland Chemical, Inc.

Chemical. (G) Capped polyurea.

Use/Production. (S) Ingredient used in an adhesive. Prod. range: Confidential.

P 91-863

Manufacturer. Dow Chemical Company.

Chemical. (G) Linear polyurethane macromer.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-864

Manufacturer. Dow Chemical Company.

Chemical. (G) Linear polyurethane macromer.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-865

Manufacturer. Dow Chemical Company.

Chemical. (G) Linear polyurethane macromer.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-866

Manufacturer. Dow Chemical Company.

Chemical. (G) Polyurethane copolymer polyol.

Use/Production. (S) Raw material to manufacture flexible polyurethane foam. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-867

Manufacturer. Dow Chemical Company.

Chemical. (G) Polyurethane copolymer polyol.

Use/Production. (S) Raw material to manufacture flexible polyurethane foam. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-868

Manufacturer. Dow Chemical Company.

Chemical. (G) Polyurethane copolymer polyol.

Use/Production. (S) Raw material to manufacture flexible polyurethane foam. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit).

P 91-889

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-870

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-871

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-872

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-873

Manufacturer. Dow Chemical Company.

Chemical. (G) Butylene oxide/ethylene oxide copolymer.

Use/Production. (S) Surfactant for cleaners. Prod. range: Confidential.

P 91-874

Manufacturer. Confidential.

Chemical. (G) Polyolefin amino ester.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Dated: June 11, 1991.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 91-14346 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3963-9]

Public Water Supply Supervision Program Revision for Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Florida is revising its approved State Public Water Supply Supervision Primacy Program. Florida has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted July 17, 1991 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made July 17, 1991, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the *Federal Register*.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the requests, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.
Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 91-14104 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3964-2]

Public Water Supply Supervision Program Revision for Georgia

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Georgia is revising its approved State Public Water Supply Supervision Primacy Program. Georgia has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to conditionally approve these State program revisions, in accordance with the conditions set forth in the May 9, 1991 letter from the U.S. EPA to the State of Georgia. This letter states that the State commits to amend the Georgia Rules at the first available opportunity by amending its proposed definition 391-3-5-.02 (ii) and by amending 391-3-5-.32 (Public Notification) to include a more specific reference to 40 CFR 141.32. The May 9, 1991 letter also states that the State commits to correct two typographical errors as soon as possible, as follows. First, the words "and after" should be inserted between "on" and "June 29, 1993" in GA 391-3-5-.20 (SWTR-MCL for Turbidity). The intent of the Georgia Rule is to maintain the current MCL for turbidity until June 28, 1993. This correction will serve to clarify the State's intent to enforce the federal date. Second, the words "Until June 28, 1993" should replace the words "On or before June 28, 1993" in GA 391-3-5-.18 (3). Once this correction has been made, the intent of this regulation should be clear.

All interested parties may request a public hearing. A request for a public hearing must be submitted July 17, 1991 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made (July 17, 1991), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to

hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Georgia Department of Natural Resources, Floyd Towers East, Suite 1066, 205 Butler Street SE., Atlanta, Georgia 30334.

Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator EPA, Region IV.

[FR Doc. 91-14105 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3964-1]

Public Water Supply Supervision Program Revision for North Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of North Carolina is revising its approved State Public Water Supply Supervision Primacy Program. North Carolina has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has

tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted (July 17, 1991) to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made (July 17, 1991), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

North Carolina Division of Environmental Health, Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687.

Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV

[FR Doc. 91-14107 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3964-3]

Public Water Supply Supervision Program Revision for South Carolina

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved State Public Water Supply Supervision Primacy Program. South Carolina has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for public hearing must be submitted (July 17, 1991) to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made (July 17, 1991), a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices.

South Carolina Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV

[FR Doc. 91-14106 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3964-6]

Public Water Supply Supervision Program Revision for Tennessee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Tennessee is revising its approved State Public Water Supply Supervision Primacy Program. Tennessee has adopted drinking water regulations for treatment of surface water and the regulation of total coliforms. EPA has determined that these sets of State program revisions are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted July 17, 1991 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made July 17, 1991, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective thirty (30) days after publication in the **Federal Register**.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) The signature of the individual making the request, or, if the request is made on behalf of an

organization or other entity, the signature of a responsible official of the organization or other entity

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Tennessee Department of Health and Environment, T.E.R.R.A. Building, 150 Ninth Avenue North, Nashville, Tennessee 37219-5404.

Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: Wayne Aronson, EPA, Region IV Drinking Water Section at the Atlanta address given above (telephone (404) 347-2913, (FTS) 257-2913).

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations).

Dated: May 31, 1991.

Patrick M. Tobin,

Acting Regional Administrator, EPA, Region IV

[FR Doc. 91-14108 Filed 6-14-91; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Public Law 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, July 2, 1991, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Financial and Budget Status Report, Congressional Report, Competitiveness Report, Project Finance, Subcommittee Status Reports: (Emerging Trade Finance—Small Business-Banking), Next Steps, and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to

arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871, not later than June 28, 1991. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to June 27, 1991, the Office of the Secretary, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

FURTHER INFORMATION: For further information, contact Joan P. Harris, Room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8871.

Joan P. Harris,

Corporate Secretary.

[FR Doc. 91-14245 Filed 6-14-91; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL ELECTION COMMISSION

Clearinghouse Advisory Panel; Renewal of Charter

SUMMARY: The National Clearinghouse on Election Administration announces the renewal of the charter for the Clearinghouse Advisory Panel.

The purpose of the Panel is to provide advice and consultation to the Clearinghouse with respect to its research programs on election administration.

FOR FURTHER INFORMATION CONTACT: Janet McKee, National Clearinghouse on Election Administration, Washington, DC 20463.

Dated: June 12, 1991.

Penelope Bonsall,

Director, National Clearinghouse on Election Administration.

[FR Doc. 91-14318 Filed 6-14-91; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of

the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No., 212-009848-025.

Title: U.S. Gulf Ports/Brazil

Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro

Companhia Maritima Nacional American Transport Lines, Inc.

Synopsis: The proposed amendment would delete provisions of the Agreement which conflict with the Commission's rules concerning the notice and waiting period required prior to the effectiveness of agreement modifications.

Dated: June 11, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-14284 Filed 6-14-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

1st Brookfield, Inc. Employee Stock Ownership Plan and Trust Agreement, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 5, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *1st Brookfield, Inc. Employee Stock Ownership Plan and Trust Agreement*, Brookfield, Illinois; to become a bank holding company by acquiring 30 percent of the voting shares of 1st Brookfield, Inc., Brookfield, Illinois, and thereby indirectly acquire First National Bank of Brookfield, Brookfield, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation*, Little Rock, Arkansas; to acquire at least 80 percent of the voting shares of Farmers and Merchant Bank, Rogers, Arkansas.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Flower Mound Bancshares, Inc.*, Flower Mound, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bank, Flower Mound, Texas.

2. *HMS Holdings, Inc.*, San Antonio, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Castle Hills National Bank, San Antonio, Texas.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14287 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

Banc One Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the

application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1991.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to engage through its subsidiary, Banc One Capital Corporation, Columbus, Ohio, in underwriting and dealing, to a limited extent, in all types of debt securities, including, without limitation, sovereign debt securities, corporate debt, debt securities convertible into equity securities, and securities issued by a trust or other vehicle secured by or representing interests in debt obligations; and all types of equity securities, including, without limitation, common stock, preferred stock, American Depositary Receipts, and direct and indirect ownership interest in corporations and other entities. *Banc One Corporation*, 76 Federal Reserve Bulletin 756 (1990); *J.P. Morgan & Co. Inc.*, 75 Federal Reserve Bulletin 192 (1989). See *Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989).

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14288 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

Bankers Trust New York Corporation; Application to Engage De Novo in Providing Investment Advice on Futures Contracts and Options on Futures Contracts on Stock and Bond Indexes

Bankers Trust New York Corporation, New York, New York ("Bankers Trust"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly owned subsidiary, BT Asset Management, Inc., New York, New York ("Company"), to engage *de novo* in the provision of investment advice as a commodity trading advisor ("CTA") with respect to the purchase and sale of financial futures contracts and options on such futures contracts on certain broad-based stock and bond index products traded on major commodity exchanges. This activity would be conducted on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Bankers Trust believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously approved the provision of investment advice as a futures commission merchant or CTA with respect to all of the specified stock and bond index futures contracts and options thereon in Bankers Trust's application. *See, e.g., The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (1991); *Chemical Banking Corporation*, 76 Federal Reserve Bulletin 660 (1990); *The Hongkong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988). Bankers Trust proposes that Company comply with the conditions set forth in § 225.25(b)(19) of Regulation Y previously considered by the Board in approving this activity.

Bankers Trust takes the position that the proposed activity will benefit the public. Bankers Trust believes that it will promote competition and provided added convenience to customers of Company. Moreover, Bankers Trust believes that the provision of investment advisory services relating to financial futures contracts on stock and bond indexes and options thereon through Company will not give rise to any

substantial risks of conflicts of interest, unsound banking practices or other subtle hazards given the framework of laws and regulations within which Company will conduct its activities.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 12, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors of the Federal Reserve Board or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14291 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

Robert C. Cudd, III; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Robert C. Cudd, III*, Monroe, Louisiana; to acquire an additional 1.78 percent of the voting shares of Central Corporation, Monroe, Louisiana, for a total of 11.76 percent, and thereby

indirectly acquire Central Bank, Monroe, Louisiana.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14286 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

First Union Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1991.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to engage *de novo* through its subsidiary, First Union Securities, Inc., Charlotte, North Carolina, in buying and selling all types

of securities on the order of investors as a "riskless principal" subject to certain limitations and restrictions as stipulated in *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989) and *J.P. Morgan & Co., Incorporated*, 76 Federal Reserve Bulletin 26 (1990), and § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14289 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

Synovus Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

CORRECTION

This notice corrects a previous Federal Register notice (FR Doc. 91-11145) published at page 21680 of the issue for Friday, May 10, 1991.

Under the Federal Reserve Bank of Atlanta, the entry for Synovus Financial Corporation is amended to read as follows:

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Synovus Financial Corporation*, Columbus, Georgia, and TB&C Bancshares, Inc., Columbus, Georgia; to acquire 100 percent of the voting shares of Athens Federal Savings Bank, Athens, Georgia. Athens Federal Savings Bank is currently a federally-chartered stock savings bank, and, immediately prior to acquisition by Synovus Financial Corporation, will convert from a federally-chartered stock savings bank into a state-chartered commercial bank and trust company to be called Athens First Bank and Trust Company.

Athens Federal Savings Bank engages in the sale of title insurance through a wholly-owned subsidiary, Athena Service Corporation.

Contemporaneously with the conversion of Athens Federal Savings Bank into Athens First Bank and Trust Company, ownership of Athena Service Corporation will pass from Athens Federal Savings Bank to Athens First Bank and Trust Company. Upon consummation of this transaction, therefore, Synovus Financial Corporation also proposes to engage indirectly in the sale of title insurance through Athena Service Corporation.

Comments on this application must be received by July 1, 1991.

Board of Governors of the Federal Reserve System, June 11, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14290 Filed 6-14-91; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of the Administrator (AKC), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0228, Nondiscrimination in Federal Financial Assistance Program. This information is needed to ensure that recipients of Federal financial assistance distribute Federal surplus property in a nondiscriminatory manner.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW, Washington, DC 20405.

Annual Reporting Burden:
Respondents: 228; *annual responses:* 1.0; *average hours per response:* 16.0000; *burden hours:* 3648.

FOR FURTHER INFORMATION CONTACT:

Thomas E. Henderson, (202) 501-1633.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F St. NW, Washington, DC 20405, by telephoning (202) 501-0666, or by faxing your request to (202) 501-2727.

Dated: June 5, 1991.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 91-14317 Filed 6-14-91; 8:45 am]

BILLING CODE 6820-BR-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Announcement Number 126]

Surveillance of Hazardous Substance Emergency Events

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces that cooperative agreement applications will be accepted to conduct surveillance of hazardous substance emergency events. The Public Health Services (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Surveillance and Data Systems and Environmental Health. (For ordering a copy of Healthy People 2000, see Section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized in sections 104(i) (9) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604 (i) (9) and (15)).

Eligible Applicants

Eligible applicants are the official public health departments of the states and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Northern Mariana Islands, and American Samoa and federally-recognized Indian Tribes.

Availability of Funds

Approximately \$450,000 is available in Fiscal Year 1991 to fund up to 9 awards (approximately 5 non-competing continuations totaling \$250,000 and 2 to 4 new competing awards totaling \$200,000). Awards are expected to be approximately \$50,000 per award for the first year. It is anticipated that awards will be for a 12-month budget period with a proposed project period of 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The primary purpose of this cooperative agreement is to develop, implement, and maintain a state-based surveillance system for hazardous substance emergency events. This surveillance system will allow the state health department to better understand

the public health impact of hazardous substance emergencies by developing, implementing, and evaluating a state-based surveillance system.

The objectives of the surveillance system are to 1) describe the distribution of hazardous substance emergencies within individual states as well as nationally, 2) describe the type and cause of morbidity and mortality experienced by employees, first responders, and the general public as a result of selected hazardous substance emergencies, 3) analyze and describe risk factors associated with the morbidity and mortality, and 4) develop and propose strategies to reduce subsequent morbidity and mortality when comparable events occur in the future.

Program Requirements

All hazardous substance emergency event surveillance (HSEES) will be performed in accordance with the methodology provided in the HSEES protocol. The protocol was developed to meet the objectives outlined under PURPOSE. A copy of the protocol will be provided in the application kit. The following criteria define an emergency event:

A. An uncontrolled or illegal release or threatened release of a hazardous substance as defined by Sections 101(14) and 104(i)(18), 42 U.S.C. 9601(14) and 9604(i)(18); and include:

1. The 200 substances identified by ATSDR to be the most hazardous substances found at Superfund sites, as published in the Federal Register on October 20, 1988 (53 FR 41280), and
2. all insecticides, pesticides, and herbicides, not limited to those listed in ATSDR's announcement (e.g., parathion, dieldrin/aldrin, heptachlor), and
3. chlorine, hydrochloric acid, sodium hydroxide, nitric acid, phosphoric acid, acrylic acid, hydrofluoric acid; and

B. The amount of product released, or that might be released, needs (or would need) to be removed, cleaned up, or neutralized according to Federal, state, or local law.

Note: Events meeting Criteria A and B include releases and threatened releases of specified chemicals, i.e., if it is thought that a tanker will explode containing phosphoric acid and the area is evacuated and no explosion occurs, the event should be included.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and ATSDR will be responsible for conducting

activities under B. below. The surveillance process will generally consist of the following activities:

A. Recipient Activities

1. Develop a mechanism for state health department notification of events in a timely fashion. This should include developing formal or informal agreements with all agencies within the states that are notified of hazardous substance emergencies. These agencies may include, but are not limited to, state police and fire departments, environmental agencies, and various offices of emergency government. These agreements should allow the participating state health departments to be notified of hazardous substance emergencies meeting the ATSDR case definition at the time, or shortly after, the event occurs.

2. Investigate the emergency event by gathering and analyzing the information gathered from various sources. Sources may include but are not limited to those agencies mentioned in Number 1. and other relevant Federal, state, local, and private agencies in keeping with the surveillance protocol.

3. Establish and maintain an appropriate and a timely schedule of gathering, entering, and transferring information to ATSDR in keeping with the HSEES Protocol.

B. ATSDR Activities

1. Collaborate with recipients in acquiring appropriate information for performance of HSEES; assist recipient in evaluating completeness and quality of relevant information.

2. Provide prototype information gathering instrument.

3. Assist recipients in establishing and maintaining appropriate and timely schedules for the HSEES surveillance process.

4. Assist recipients in assuring appropriate training for maintaining the surveillance system.

5. Analyze environmental and/or biological results for specific situations in which ATSDR has unique capabilities.

6. Evaluate the overall performance of recipient's adherence to the surveillance protocol.

Evaluation Criteria

A. Review Procedures

Applications will be reviewed and evaluated according to the following criteria:

1. Scientific and technical merit review criteria for states new to HSEES.

a. Appropriateness and Knowledge of Surveillance System (25 percent)—The extent to which the applicant demonstrates a need for such a surveillance system within their state. Additionally, the applicant should demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

b. Proposed Methodology (25 percent)—The extent to which the applicant demonstrates experience in, or an ability to develop, implement, and evaluate surveillance systems in accordance with the HSEES Protocol.

c. Capability and Coordination Efforts (20 percent)—The extent to which the applicant demonstrates the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the state health departments that receive notifications of hazardous substance emergencies. This is necessary to assure that state health departments are notified of all hazardous substance emergencies.

d. Quality of Information Collection (20 percent)—The extent to which the applicant describes experience in collaborative projects where it was responsible for collecting information in a consistent format. Examples can include surveillance projects, surveys, and prospective or retrospective hypothesis testing studies. Of critical importance to the success of the surveillance project is the timely submission of information for analysis. The applicant must demonstrate experience in, or the proposed ability to collect, enter, and transfer information on a scheduled basis.

e. Program Personnel (10 percent)—The extent to which the proposed program staff are qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. Such in-kind support can include existing support staff, technical staff (e.g., epidemiologists, data management staff, environmental health scientists, emergency response personnel), and computer hardware.

f. Program Budget (Not scored)—The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

2. Scientific and technical merit review criteria for states with existing HSEES.

a. Appropriateness and knowledge of surveillance system (25 percent)—The extent to which the applicant demonstrates experience in collecting emergency event surveillance information within the state. This should include, but is not limited to, an assessment of the extent of hazardous substance emergencies and/or the morbidity and mortality associated with these events. Additionally, the applicant should demonstrate an understanding of the needs, limitations, and experience with surveillance systems as a means of assessing the impact of hazardous substances on public health.

b. Proposed methodology (25 percent)—The extent to which the applicant demonstrates experience in HSEES. This should include the development, implementation, and evaluation of an HSEES system in accordance with the surveillance protocol.

c. Capability and coordination efforts (20 percent)—The extent to which the applicant demonstrates the ability to develop, maintain, or expand a formal or an informal working relationship with agencies outside of the state health departments that receive notifications of hazardous substance emergencies. This is necessary to assure that state health departments are notified of all hazardous substance emergencies.

d. Quality of information collection (20 percent)—The extent to which the applicant describes experience in HSEES systems for which the organization was responsible for collecting information in a consistent format. Of critical importance to the success of the surveillance project is the timely submission of data for analysis. The applicant must demonstrate experience in collecting, entering, and transferring information on a scheduled basis.

e. Program personnel (10 percent)—The extent to which the proposed program staff is qualified and appropriate, and the time allocated for them to accomplish program activities is adequate. With limited funds available, the applicant must demonstrate that an infrastructure exists within the health department that will allow for full participation in the surveillance system with partial ATSDR financial support. Such in-kind support can include existing support staff, technical staff (e.g., epidemiologists, data management staff, environmental health scientists, emergency response personnel), and computer hardware.

f. Program budget (not scored)—The extent to which the budget is reasonable, clearly justified, and consistent with intended use of cooperative agreement funds.

B. Review of Continuation Applications

Continuation awards within the project period will be made on the basis of the following criteria:

1. Satisfactory progress has been made in meeting project objectives;

2. Objectives for the new budget period are realistic, specific, and measurable;

3. Proposed changes in described long-term objectives, methods of operation, need for cooperative agreement support, and/or evaluation procedures will lead to achievement of project objectives; and

4. The budget request is clearly justified and consistent with the intended use of cooperative agreement funds.

Funding Priorities

Renewal applicants and new HSEES applicants must demonstrate the abilities described earlier in this announcement, and established project shall neither be preferentially rewarded or penalized for previous ATSDR collaboration. Priority will be given for the following:

A. Geographic representation of the entire United States;

B. Representation from both agricultural and industrial states.

Other Requirements

Paperwork Reduction Act

Projects that involve collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs including their names, addresses, and

telephone numbers is included in the application kit. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

The following states and territories have elected not to participate in the "Intergovernmental Review of Federal Programs": Alaska, Idaho, Kansas, Minnesota, Nebraska, Virginia, American Samoa, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.161, Health Programs for Agency for Toxic Substances and Disease Registry.

Application Submission Deadline

The original and two copies of the application (Form PHS 5161-1) should be submitted to Henry S. Cassell, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305, on or before July 26, 1991. By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Late Applications

Applications that do not meet the criteria in 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

If you are interested in obtaining additional information on application procedures, copies of application forms.

and other material, please contact the following CDC/ATSDR personnel.

Business Management Technical Assistance: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, Georgia 30305; telephone: (404) 842-6630 or FTS 236-6630.

Programmatic Technical Assistance: Dr. Wendy Kaye, Chief, Epidemiology and Surveillance Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E-31, Atlanta, Georgia 30333; telephone: (404) 639-0555 or FTS 236-0555.

Please refer to announcement number 126 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 10, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-14295 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-70-M

[Announcement Number 132]

Areas Closed or Restricted to the Public Because of Toxic Substance Contamination

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of funds in Fiscal Year 1991 for a cooperative agreement with the National Governors' Association (NGA) to maintain a complete listing of areas closed to the public or otherwise restricted in use because of toxic substance contamination; to establish and maintain an inventory of state-based literature, research, and studies on the health effects of toxic substances; and to assist NGA in developing additional projects in response to emerging environmental health issues that facilitate state information exchange and policy development. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the

quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under sections 104(i)(1) (B) and (C), 104(i)(14), and 104(i)(15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, (42 U.S.C. 9604(i)(1) (B) and (C), (14), and (15)). Section 104(i)(14) states, in part, * * * "the administrator of ATSDR shall assemble, develop as necessary, and distribute to the states, and upon request to medical colleges, physicians, and other health professionals, appropriate educational material (including short courses) on the medical surveillance, screening and methods of diagnosis and treatment of injury or disease related to exposure to hazardous substances * * *."

Section 104(i)(15) states: The activities of the Administrator of ATSDR described in this subsection * * * "shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with the states (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities."

Eligible Applicant

Assistance will be provided only to the National Governors' Association (NGA). No other applications are solicited or will be accepted. The National Governors' Association is a unique institution for collecting and maintaining the information mandated under the Sections of CERCLA cited above, because of its special relationship with the states, commonwealths, and territories of the United States. NGA has developed, with ATSDR, the methodology and protocol for the data collection and maintenance, as well as convening a Task Force of senior state environmental health, natural resource, and policy officials to assist in the development, progress, and final presentation of the data. In addition, this Task Force provides assistance and guidance to NGA and ATSDR, as needed, on emerging environmental health issues that facilitate state information exchange and policy development.

Availability of Funds

Approximately \$150,000 will be available in Fiscal Year 1991. It is expected that the award will begin on or

about July 1, 1991, for a 12-month budget period within a 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds. The funding estimate outlined above may vary and is subject to change.

Purpose

The cooperative agreement purposes are: (1) To assist the National Governors' Association (NGA) in updating the data contained in the biennially prepared document "Restrictions Imposed on Contaminated Sites: A Status of State Actions"; (2) to assist in cataloging various state efforts being used to avoid public exposure to hazardous sites and analyzing their site-specific responses; and (3) to develop a descriptive directory of state agencies and officials that have authority to close or restrict areas to public use because of toxic contamination. NGA will undertake additional projects in response to emerging state environmental health issues. These projects may include an analysis of how public health agencies can most effectively address public concerns about environmental health hazards. This information will assist state Governors in managing their hazardous substance cleanup programs.

Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A. below and ATSDR will be responsible for conducting activities under B. below.

A. NGA Activities

1. In cooperation with ATSDR and the individual states and territories, develop the methodology and protocol to update the data contained in the biennially prepared document "Restrictions Imposed on Contaminated Sites: A Status of State Actions."

2. Gather information about state authorities and activities for closing and restricting areas to the public.

3. Analyze the collected information and comment on trends found in the data.

4. Prepare and publish a biennial listing of sites closed or restricted because of toxic contamination.

5. Conduct workshops and publish memoranda and reports, as needed, in response to emerging environmental health issues.

B. ATSDR Activities

1. Assist in updating the information contained in the biennially prepared document "Restrictions Imposed on Contaminated Sites: A Status of State Actions."

2. Participate in defining the scope and implementing the project and the preparation and publication of the study results.

3. Provide NGA with the Office of Management and Budget (OMB) Approval Number [0923-0001, "Update Survey of Areas Closed or Otherwise Restricted Because of Toxic Contamination," Expiration Date 11/93] for collecting the data for the listing of sites closed or restricted because of toxic contamination.

4. Assist NGA in developing additional projects in response to emerging environmental health issues that facilitate state information exchange and policy development.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement. (15 points)

2. The ability to provide the staff, knowledge, financial and other resources required to perform the applicant's responsibilities in this project, and describe the approach to be used in carrying out responsibilities. (15 points)

3. The extent to which the applicant understands the objectives of the project; the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, ATSDR and any other entities for carrying out those steps. (15 points)

4. The proposed schedule for accomplishing each of the activities to be carried out in this project, and a method for evaluating the accomplishment, are clearly defined. (15 points)

5. The qualifications and appropriateness of proposed program staff, and time allocated for them to accomplish program activities; the support staff available for the performance of this project; and the facilities, space and equipment available for performance of this project. (15 points)

6. The proposed plan for administering this project, and the name, qualifications, time allocations of the individual whom the applicant proposes to make responsible for its administration. (15 points)

7. The detailed budget which should indicate (1) anticipated costs for personnel, travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs will be reviewed for its reasonableness in relation to the proposed program. (10 points)

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR 100).

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.161, Health Programs for Toxic Substances and Disease Registry.

Application Submission and Deadline

The original and two copies of the application Form PHS 5161-1 shall be submitted to Henry S. Cassell, III, Grants Management Officer, CDC Procurement and Grants Office, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305, on or before June 19, 1991. By formal agreement, the CDC Procurement and Grants Office will act on behalf of and for ATSDR on this matter.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference ANNOUNCEMENT NUMBER 132, AREAS CLOSED OR RESTRICTED TO THE PUBLIC BECAUSE OF TOXIC SUBSTANCE CONTAMINATION, and contact the following:

Business Management Technical Assistance: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Mailstop E-14, Atlanta, Georgia 30305, or by calling (404) 842-6630 or FTS 236-6630.

Programmatic Technical Assistance: Jim Carpenter, MA, Division of Health Education, Agency for Toxic Substances and Disease Registry, (404) 236-0736 or FTS 236-0736.

A copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 10, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91-14294 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-70-M

Alcohol, Drug Abuse, and Mental Health Administration**Partial Suspension Lifted; Laboratory Again Meets Minimum Standards to Engage in Confirmatory Drug Testing for Amphetamines**

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes in the *Federal Register* a list of standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986) dated April 11, 1988. The following laboratory's certification to engage in urine drug testing for Federal Agencies was partially suspended on January 14, 1991 (53 FR 2183, January 22, 1991) and was fully reinstated effective June 12, 1991: Bio-Analytical Technologies, 2356 North Lincoln Avenue, Chicago, IL 60614; Telephone: 312-880-6900.

FOR FURTHER INFORMATION CONTACT: Mona W. Brown, Press Officer, National Institute on Drug Abuse, room 10-A-46, 5600 Fishers Lane, Rockville, Maryland 20857; Telephone: 301-443-6245.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 91-14486 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

[Program Announcement Number 912]

Grants for Injury Prevention and Control Research; Availability of Funds for Fiscal Year 1992**Introduction**

The Centers for Disease Control (CDC) announces that applications are being accepted for Injury Prevention and Control Research Grants. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. (For ordering a copy of Healthy People 2000, see the

section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b). Program regulations are set forth in title 42 of the Code of Federal Regulations, part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus State and local health departments and other State and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or women-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Availability of Funds

Approximately \$3.5 million may be available in Fiscal Year 1992 to fund approximately 14 to 20 grants for periods of up to three years. The amount of funding actually available may vary and is subject to change. It is expected that the average new award will be \$150,000, the range being \$60,000 to \$225,000 (including both direct and indirect costs). Research grant supplements will generally be no more than \$50,000 (including both direct and indirect costs). Beginning award dates for each submission deadline are shown in the "Receipt and Review Schedule" section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress, including the achievement of workplan milestones, and the availability of federal funds.

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in *Injury in America*, *Injury Prevention: Meeting the Challenge*, *Cost of Injury*, and *Healthy People 2000*. (To receive information on these reports call (404) 332-4561 listed in the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

B. To encourage professionals from a wide spectrum of disciplines, such as engineering, medicine, health care, public health, criminal justice, behavioral and social sciences, and others, to undertake research to prevent and control injuries.

C. To rigorously evaluate current and new intervention methods and strategies for the prevention and control of injuries.

Program Requirements

The following are applicant requirements:

A. A director who has specific authority and responsibility to carry out the project.

B. Demonstrated experience in successfully conducting, evaluating, and publishing injury-related research.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. An explanation of how research findings will lead to the development of injury control interventions within 3-5 years of project start-up. Furthermore, how the research findings might be disseminated and implemented through organizations (such as public health agencies) or systems, both public and private.

Grant funds will not be made available to support the provision of direct care services. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies may be supported which evaluate the effect of pre-hospital, hospital, and rehabilitative care and independent living systems on injury outcomes and costs.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interests

The focus of grants should reflect the broad-based need to control injury morbidity, mortality, disability, and costs. Special consideration may be given to applications requesting one or two years of funding. One-year pilot projects are encouraged.

The three phases of injury prevention and control are defined as prevention, acute care, and rehabilitation. The disciplines of biomechanics and epidemiology may be of importance in addressing each of these phases.

In prevention, there is specific interest in research which evaluates the effectiveness of interventions in preventing injuries of reducing their impact. This research might evaluate one or more different approaches to implementing a specific intervention strategy (e.g. increasing the use of bicycle helmets among children) and compare the effectiveness of several different countermeasures (e.g. environmental, educational, and legal) applied simultaneously in a particular

setting. Interventions chosen for evaluation should have a significant potential for reduction in injury morbidity, mortality, disability, or cost. The development, application and evaluation of promising, innovative interventions applicable to intentional injury, (e.g. the prevention of youth violence in minority communities and youth suicide) is also of interest. Special consideration will be given to grants which target populations at high risk for injury and injury consequences, including children, minorities, the elderly, rural residents, and farm families.

In acute care, there is programmatic interest in identifying optimal methods of diagnosing and treating patients who have sustained major trauma, including central nervous system injuries, burns, and multiple organ system injuries. Research needs encompass the full spectrum of acute care of the trauma patient, from triage decisions in the pre-hospital setting to management of postoperative complications such as multiple organ failure syndrome. There is also special interest in the design and evaluation of trauma registries, and regional trauma care systems.

In rehabilitation, there is programmatic interest in research directed towards minimizing the secondary complications of injury including pressure sores, contractures, muscular atrophy, skeletal deformity and other definable conditions. Likewise, research is needed to evaluate the effectiveness of rehabilitation methods and practices, identifying those which minimize long-term adverse effects and those which lead to optimal functional recovery. Finally, there is interest in the evaluation of integrated systems for rehabilitation and in applying findings from such studies to the development of regional and/or statewide systems of rehabilitation.

In biomechanics, there is special programmatic interest in brain and spinal cord injury, and outcomes from multiple trauma. This interest includes the biomechanical evaluation of intervention concepts and strategies; development of models to elucidate injury physiology and pharmacologic, surgical and other interventions; defining human tolerance limits for Injury among children, women, the chronically ill and older persons; improvements in injury assessment technology; and understanding impact injury mechanisms and quantifying injury-related biomechanical responses for critical areas of the human body. Consideration will also be given to the

biomechanics of thoracic and abdominal viscera, joints, and musculature.

In epidemiology, there is programmatic interest in analytic research that identifies mechanisms, causes, or risks of injury which might lead to new or more effective interventions. Also of interest is epidemiologic research having as its focus the development of improved methods and the evaluation and improvement of injury surveillance systems. Research is needed that more accurately defines the cost of injury and the cost effectiveness of interventions.

Evaluation Criteria

Applications will be evaluated by a dual review process. Awards will be made based on priority score ranking by Injury Research Grants Review Committee (IRGRC), merit and program review by senior Federal staff, and the availability of funds.

A. The first review will be a peer review to be conducted on all applications. Factors to be considered will include:

1. The degree to which the applicant possesses requirements described under the section PROGRAM REQUIREMENTS.

2. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described in Injury In America, Injury Prevention: Meeting the Challenge, Cost of Injury, and Healthy People 2000.

3. The merit, significance, and originality, from a scientific or a technical standpoint, of the goals of the proposed research, including the adequacy of the theoretical and conceptual framework for the research.

4. Evidence of familiarity with relevant research literature.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives.

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

9. The reasonableness of the proposed budget to the proposed research and demonstration program.

10. Adequacy of existing and proposed facilities and resources.

11. For competitive renewal applications, the progress made during the prior project period. Annual work-in-progress workshops will be utilized to help assess completed project period work.

B. The second review will be conducted by senior Federal staff. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the objectives stated in Injury In America, Injury Prevention: Meeting the Challenge, Cost of Injury, and Healthy People 2000.

3. National needs and geographic balance.

4. Overall distribution among:

- The three phases of injury control: prevention, acute care, and rehabilitation;

- The major disciplines of injury control: biomechanics and epidemiology;

- Traffic and motor vehicle injury research and other research;

- Intentional and unintentional injury;
- Populations addressed (for example, minorities, the elderly, children, urban, rural, etc); and

5. Budgetary considerations (e.g., preference may be given to applicants who submit proposals requesting funding for research projects of one to two year's duration).

C. Continued Funding. Continuation awards made after FY 1992, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress has been demonstrated at the annual work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

D. Supplementary Funding. Competing Supplemental grant awards may be made when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labelled to denote their status as requesting supplemental funding support. These

applications will be reviewed by the IRGRC and the secondary review group.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.136.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than two months prior to the planned submission deadline, (e.g., August 1 for October 1 submission). The letter should identify the announcement number being responded to, indicate the intended submission deadline, name the principal investigator, and specify the injury control phase addressed by the proposed project (e.g., prevention, acute care, or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives relevant information prior to application submission.

B. Applications

Applicants should use Form PHS-398 and adhere to the Errata Instruction Sheet for Form PHS-398 contained in the Grant Application Kit. States and local government may use PHS-5161-1, however, PHS-398 is preferred. If the applicant is using PHS-398, submit an original and six copies, if the applicant is using PHS-5161-1, submit an original and two copies on or before one of the receipt deadlines mentioned in section (D) below to: Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305.

C. Deadlines

Applications shall be considered as meeting a deadline if they are received at the above address on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly

dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings. Applications which do not meet the criteria above are considered late applications and will be returned to the applicant.

D. Receipt and Review Schedule

This is a continuous announcement, consequently, the receipt date will be on-going until further notice. The proposed timetable for receiving applications and awarding grants is as follows:

Receipt of new/ revised/ supple- mentary/ competi- tive renewal applica- tions	Initial review	Second- ary review	Earliest award date
Oct. 1, 1991.	Jan./Feb....	Apr./May..	June 1, 1992.

Future dates for this announcement submission are as follows:

Receipt of new/ revised/ supple- mentary/ competi- tive renewal applica- tions	Initial review	Second- ary review	Earliest award date
Oct. 1	Jan./ Feb.	Apr./May..	June 1.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 912. You will receive a complete program description, information on application procedures, and an application package containing addresses and phone numbers for the contact personnel. Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Mailstop E-14, Atlanta, GA 30305 will provide the business management technical assistance, and programmatic technical assistance will be provided by Ted Jones, Project Officer, Division of Injury Control, Center for Environmental Health and Injury Control, Centers for Disease

Control, 1600 Clifton Road NE., Mailstop F-38, Atlanta, GA 30333.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC. 20402-9325 (Telephone (202) 783-3238).

Dated: June 10, 1991.

Robert L. Foster,

Acting Director, Office of Program Support,
Centers for Disease Control

[FR Doc. 91-14292 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-18-M

[Program Announcement Number 913]

Grants for Injury Control Research Centers and Injury Control Research Program Project Grants; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC) announces that grant applications are being accepted for Injury Control Research Centers (ICRCs) and Injury Control Research Program Project Grants (RPPGs). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Violent and Abusive Behavior and Unintentional Injuries. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b). Program regulations are set forth in title 42 of the Code of Federal Regulations, part 52.

Eligible Applicant

Eligible applicants include all nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, and other public and private organizations, State and local health departments and small, minority and/or women-owned businesses are eligible for these grants. Current holders of CDC injury prevention research center grants and injury control research program project grants are eligible to apply.

Availability of Funds

Approximately \$2.2 million may be available in Fiscal Year 1992 to fund approximately two to four center awards and/or research program project awards for up to five years. The amount of funding actually available may vary and is subject to change. Beginning award dates for each submission are shown in the receipt and review section of this announcement. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. New center grant awards will not exceed \$500,000 per year (including both direct and indirect costs), new research program project awards will not exceed \$350,000 per year (including both direct and indirect costs) and supplemental funding awards will not exceed \$225,000 per year (including both direct and indirect costs).

Purpose

The purposes of this program are:

A. To support injury prevention and control research on priority issues as delineated in: Healthy People 2000, Injury in America, Injury Prevention: Meeting the Challenge, and Cost of Injury, a Report to the Congress; (To receive information on these reports call (404) 332-4561 listed in the section entitled **WHERE TO OBTAIN ADDITIONAL INFORMATION**);

B. To integrate the disciplines of engineering, medicine, health care, public health, criminal justice, behavioral and social sciences, and others, in order to prevent and control injuries more effectively;

C. To identify and rigorously evaluate current and new interventions for the prevention and control of injuries;

D. To support ICRCs which will develop an in-depth approach to injury control research and training;

E. To bring the knowledge and expertise of ICRCs to bear on the development of effective public-and private-sector programs for injury prevention and control;

F. To help make available the expertise of academic institutions for the evaluation and improvement of injury prevention, surveillance, and control programs instituted and carried out by Federal, State or local government and private-sector organizations;

G. To support RPPGs which will focus several interdisciplinary research projects on a particular phase of injury, a cause of injury, or a population segment affected by injury.

Program Requirements

A. Essential Requirements for ICRCs

1. New applicants should initially show expertise in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and provide specific, time-framed plans to support research in all three phases by the second or third year of the applicant's project period.

2. New applicants should describe ongoing injury-related research projects or control activities currently supported by other sources of funding.

3. New applicants should provide a director who has specific authority and responsibility to carry out the project. The director should report to an appropriate institution official, e.g. dean of a school or vice president of a university.

4. New applicants should demonstrate experience in successfully conducting, evaluating, and publishing injury-related research and/or designing, implementing, and evaluating injury control programs.

5. New applicants should have effective and well-defined working relationships with outside agencies and other entities which will ensure implementation of the proposed activities.

6. New applicants should provide evidence of involvement of specialists or expertise in medicine, health care, engineering, epidemiology, behavioral and social sciences, and public health, with a specific, time-framed plan of expansion to include biomechanics and health policy and management. These will be considered the core disciplines and fields for ICRCs.

7. New applicants should have an established curricula and graduate training programs in disciplines relevant to injury control (for example, epidemiology, biomechanics, safety engineering, traffic safety behavioral sciences, and economics).

8. New applicants should have mechanisms for disseminating the injury control research findings, translating them into interventions, and evaluating their effectiveness.

9. New applicants should have an established relationship, demonstrated by letters of agreement, with injury prevention and control programs or injury surveillance programs being carried out in the state in which the ICRC is located. Cooperation with governmental programs is required; cooperation with private-sector programs is encouraged. Special emphasis should also be given to establishing cooperative relationships with any adjacent states having CDC-

funded injury control capacity-building, incentive, or surveillance grants and other state and local health departments who may not currently have CDC support for injury activities.

B. Essential Requirements for RPPGs

1. New applicants should show expertise in the phases or disciplines of injury control which the research program addresses. RPPG applicants should also provide specific time-framed objectives for their research, covering all years of the proposed project.

2. The director must have specific authority and responsibility to carry out the project and must report to an appropriate level university official, e.g. dean of a school or department chairperson.

3. The investigators must have demonstrated experience in successfully conducting, evaluating, and publishing injury-related research, and/or designing, implementing, and evaluating injury control programs.

4. The applicant must describe effective and well-defined working relationships with outside agencies and other entities which can ensure implementation of proposed activities.

5. The applicant must specify mechanisms for linking the injury control research findings with public health (i.e. state and local health departments) and other intervention efforts to facilitate rapid translation, dissemination, and application of research findings.

6. Applicants should clearly describe and be able to demonstrate how several proposed multiple research projects interrelate and complement each other. Outcome objectives of the research should be stated such that accomplishments clearly reflect elements of each individual project within the RPPG.

7. The applicant must specify how each individual project and the program as a whole will be evaluated.

Grant funds will not be made available to support the provision of direct care. Studies may be supported which evaluate methods of care and rehabilitation for potential reductions in injury effects and costs. Studies can be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated October 1, 1990, as amended), as necessary to meet the requirements of the program and strengthen the overall application. In general, consortia agreements would be

carried out with entities located in the same state, and adjacent state, or the same regional grouping of states.

Evaluation Criteria

Applications will be evaluated by a dual review process. The first review will be a peer evaluation of the scientific and technical merit of the application. The second review will be conducted by senior Federal staff, who will consider the results of the first review together with program need and relevance. Awards will be made based on merit and priority score ranking by the Injury Research Grants Review Committee (IRGRC), program review by senior Federal staff, and the availability of funds.

A. Review by the Injury Research Grants Review Committee (IRGRC)

Peer review of ICRC grant applications will be conducted by the IRGRC, which may recommend approval as an ICRC, approval as an RPPG or disapproval based on the intent of the application. Site visits may be a part of this process.

Factors to be considered by IRGRC include:

1. The degree to which the applicant possesses the requirement described in the section PROGRAM REQUIREMENTS.

2. The overall match between the applicant's research and, where applicable, training objectives and those listed in national program priorities as referenced in the Background section of this announcement.

3. The scientific and technical merit of the overall application.

4. The adequacy of the methods for coordinating the overall program and its component parts.

5. The extent to which the evaluation plan will allow for the quantitative measurement of progress toward the achievement of stated objectives.

6. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

7. The degree of commitment measured in terms of injury control personnel, facilities, and activities supported by other funding sources and the likelihood that this commitment will be sustained or expanded in future years.

8. The degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of this commitment and cooperation. Specific letters of support or understanding from appropriate governmental bodies must be provided with the application.

9. The reasonableness of the proposed budget for the proposed program.

10. Progress thus far made, if the applicant is submitting a competitive renewal application. Special consideration may be given to existing ICRCs who have documented success against the workplan developed during the previous project periods, who are recompeting and where the applicant ICRC or RPPG has an appropriate organizational, and reporting relationship within the applicant institution.

11. Plans to become self-sustaining.

B. Review by Senior Federal Staff

Further review will be conducted by Senior Federal staff. Factors to be considered will be:

1. The results of the peer review.
2. The significance of the proposed activities as they relate to the achievement of national objectives.
3. National needs and geographic balance. Because no ICRCs were funded during fiscal year 1989 and 1990 in Federal regions II, V, VI, VII, approved ICRC or RPPG proposals from states in these regions may be accorded special consideration.

4. Overall distribution of the thematic focus of competing applications, the overall balance of the program in addressing the three phases of injury control (prevention, acute care and rehabilitation), the control of injury among populations who are at increased risk, including minority groups, the elderly and children; the major causes of intentional and unintentional injury; and major disciplines of injury control (such as biomechanics and epidemiology).

5. Budgetary considerations.

6. Plans to become self-sustaining.

C. Applications for Supplemental Funding

Competing Supplemental grant awards may be made when funds are available, to support research work or activities not previously approved by the IRGRC. Supplementary funding may be sought for either injury research grants, or Injury Control Research Center (ICRC) grants and Research Program projects (RPPG) grants. Applications should be clearly labelled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

D. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly workplans are being met;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan;

5. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds; and

6. Progress has been made in developing cooperative and collaborative relationships with injury surveillance and control programs implemented by state and local governments and private sector organizations.

E.O. 12371 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Inter-Governmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance Number is 93.136.

Application Submission and Deadlines

A. Preapplication Letter of Intent

Although it is not a prerequisite to apply, potential applicants are encouraged to submit a nonbinding letter of intent to apply to the Grants Management Officer (whose address is given in this section Item B). It should be postmarked no later than two months prior to the submission deadline (December 1, 1991 for February 1, 1992 submission deadline). The letter should identify the announcement number being responded to, indicate the submission deadline which will be met, indicate whether the application is for an ICRC or an RPPG, name the principal investigator, and specify the injury control theme of the proposed center or program (e.g. acute care, biomechanics, epidemiology, prevention, intentional injury or rehabilitation). The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently.

B. Applications

Applicants from academic institutions and the private sector should use Form

PHS-398 and adhere to the ERRATA Instruction Sheet for PHS-398 contained in the Grant Application Kit. State and local government applicants may use PHS-5161-1, however PHS 398 is preferred. The narrative section for each project within an ICRC or an RPPG should not exceed 20 typewritten pages. Refer to section 1, page 12, of PHS-398 instruction for description of specifications for font type and size. Applications not adhering to these specifications may be returned to applicant. Applicants using form PHS-398 should submit an original and six copies and applicants using form PHS-5161-1 should submit an original and two copies of the application to Henry S. Cassell III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E-14, Atlanta, Georgia 30305.

C. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria in C1. or C2. above are considered late applications and will be returned to the applicant.

D. Receipt and Review Schedule

This is a continuous announcement consequently, these receipt dates will be ongoing until further notice. The proposed timetables for receiving applications and awarding grants is as follows:

Receipt of new/ revised/ supplemental/ competitive renewal applications	Initial review	Secondary review	Earliest award date
Feb. 1, 1992.	May.....	July.....	Dec. 1, 1992

Future receipt dates are as follows:

Receipt of new/ revised/ supplemental/ competitive renewal applications	Initial review	Secondary review	Earliest award date
February 1.....	May	July	Decem- ber.

Where to Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address and phone number, and will need to refer to Announcement Number 913. You will receive a complete program description, information on application procedures, and an application package containing addresses and phone numbers for the contact personnel. Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E-14, Atlanta, GA 30305 will provide the business management technical assistance, and programmatic technical assistance will be provided by Howard Hill, Project Officer, Center for Environmental Health and Injury Control, Centers for Disease Control, 1600 Clifton Road NE., Mailstop F-36, Atlanta, GA 30333.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone (202) 783-3238).

Dated: June 10, 1991.

Robert L. Foster,

Acting Director Office of Program Support
Centers for Disease Control

[FR Doc. 91-14293 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-18-M

Health Resources and Services Administration

Availability of Funds for the National Health Service Corps; Loan Repayment Program and Grants for State Loan Repayment Programs

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that approximately \$48.8 million will be available in Fiscal Year (FY) 1991 for: (1) Awards for educational

loan repayment under the National Health Service Corps (NHSC) Loan Repayment Program (Section 338B of the Public Health Service (PHS) Act); (2) grants to States to operate loan repayment programs (section 338I of the PHS Act); and (3) awards under the NHSC Scholarship Program (section 338A of the PHS Act).

The HRSA, through this notice, invites health professionals to apply for participation in the NHSC Loan Repayment Program and invites States to apply for grants to operate State Loan Repayment Programs. The HRSA estimates that approximately 300 Loan Repayment awards totaling \$20 million may be made to primary care physicians, dentists, or nurse midwives, physician assistants, and nurse practitioners who are certified or eligible to sit for the certifying examination in their profession. Up to 25 grants averaging \$140,000 each and totaling approximately \$3.5 million may be awarded to States for State Loan Repayment Programs for one year budget periods and up to three year project periods.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. These programs will contribute to the Healthy People 2000 objectives by improving access to primary health care services through coordinated systems of care for medically underserved populations in both rural and urban areas. Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-01) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone 202-783-3238).

Part A of this notice contains specific information concerning the NHSC Loan Repayment Program, and Part B contains specific information concerning grants for State Loan Repayment Programs.

Part A—NHSC Loan Repayment Program

DATES: To receive consideration for funding, health professionals must submit their applications by September 1, 1991. To assure early processing of the application and approval for site matching, individuals are encouraged to submit applications well ahead of the September 1 deadline.

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or
2. Sent on or before the deadline and received in time for submission to the reviewing program official. [Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing].

Applications received after the announced closing date will not be considered for funding.

ADDRESSES: Application material may be obtained by calling or writing, and completed applications should be returned to, Director, Division of Health Services Scholarships, Bureau of Health Care Delivery and Assistance, HRSA, room 7-23, 5600 Fishers Lane, Rockville, Maryland 20857, (301-443-1650). The application has been approved under Office of Management and Budget (OMB) Number 0915-0127.

FOR FURTHER INFORMATION CONTACT:

For further program information and assistance, please contact Mr. Clark Gordon, Branch Chief, NHSC Loan Repayment Program, at the above address and phone number.

SUPPLEMENTARY INFORMATION: Section 338B of the Public Health Service Act (42 U.S.C. 2541-1) authorizes the Secretary to establish the NHSC Loan Repayment Program, to help in assuring, with respect to the provision of primary health services, an adequate supply of trained primary care health professionals for the NHSC. The NHSC is used by the Secretary to provide primary health services in designated health professional shortage areas (HPSAs). Primary health services are services regarding family medicine, internal medicine, pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

Under the NHSC Loan Repayment Program, the Secretary will repay graduate and undergraduate educational loans incurred by health professionals. For the first two years at an approved site in a designated HPSA, the Secretary will repay up to \$25,000 per year of the educational loans of such individual. For subsequent years of service the Secretary will repay up to \$35,000 per year. The Secretary will provide tax liability payments in an amount equal to 39 percent of the total loan repayments made during that tax year to reimburse the Program participants for increased tax liability resulting from loan repayments received under this Program. The increase in the amount of

the tax liability payment made will apply only to contracts entered into after November 16, 1990. In addition to these amounts, NHSC Loan Repayment Program participants will receive a salary from a private nonprofit or public entity or, in some cases, the Federal Government during the term of their service.

The Secretary will identify annually those HPSA sites which will be available for service repayment under the NHSC Loan Repayment Program.

The Secretary will select applicants for consideration for participation in the NHSC Loan Repayment Program according to the following selection criteria:

(1) The extent to which an individual's training in a health profession or specialty is determined by the Secretary to be needed by the NHSC in providing primary care health services. From time to time, the Secretary will publish a notice detailing the professions and specialties most needed by the NHSC. Current professional and specialty priorities are outlined at the end of Part A of this notice.

(2) The extent to which an individual is determined by the Secretary to be committed to serve in a HPSA.

(3) The extent of an individual's demonstrated interest in providing primary health services.

(4) The immediacy of an individual's availability for service. Individuals who have a degree, have completed all necessary postgraduate training in their professions and specialties (i.e., in the case of physicians, are certified or eligible to sit for the certifying examinations of a specialty board), have a current and unrestricted valid license to practice their profession in a State, and are immediately available to serve, will receive highest consideration.

(5) The academic standing, prior professional experience in a HPSA, board certification, residency achievements, peer recommendations, and other criteria related to professional competence or conduct will also be considered.

(6) The length of the individual's proposed service obligation, with greatest consideration being given to persons who agree to serve for longer periods of time.

Among applicants, priority will be given to those applicants:

- Whose health profession or specialty is most needed by the NHSC;
- Who have and whose spouses, if any, have characteristics that increase the probability of their continuing to serve in a HPSA upon completion of their service obligations;

- Subject to the preceding paragraph, who are from disadvantaged backgrounds.

Eligible Applicants

To be eligible to participate in the NHSC Loan Repayment Program, an individual must: (a)(1) Have a degree and, if applicable, completed an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practitioner, or physician assistant, and have a current and valid license to practice such health profession in a State; (2) be enrolled in an approved graduate training program in allopathic or osteopathic medicine, dentistry, or other health profession; or (3) be enrolled as a full-time student at an accredited school in a State and in the final year of a course of study or program leading to a degree in allopathic or osteopathic medicine, dentistry, or other health profession; (b) be eligible for appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the NHSC; and (c) submit an application for a contract to participate in the NHSC Loan Repayment Program which describes the repayment of educational loans in return for the individual serving for an obligated period.

Any individual who previously incurred an obligation for health professional services to the Federal Government, a State Government, or other entity is ineligible to participate in the NHSC Loan Repayment Program unless such obligation will be completely satisfied prior to the beginning of service under this Program. Any individual who has breached an obligation for health professional service to the Federal Government, a State Government or other entity is ineligible to participate in the NHSC Loan Repayment Program. No loan repayments will be made for any professional practice performed prior to the effective date of the NHSC Loan Repayment Program contract.

Professions and Specialties Needed by the NHSC

At this time, the Secretary has determined that priority will be given to physicians who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, osteopathic general practice, obstetrics/gynecology, internal medicine, and pediatrics. In addition, priority will be given to nurse midwives, physician assistants, and nurse practitioners who

are certified or eligible to sit for the certifying examination in their profession.

Other Award Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, since Executive Order 12372 does not cover payments to individuals.

The OMB Catalog of Federal Domestic Assistance number for this program is 93.162.

Part B—Grants for State Loan Repayment Programs

DATES: Completed applications, to receive consideration, must be delivered by 5 p.m. on July 15, 1991, to the address below or postmarked by July 15, 1991, and delivered in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier. Private metered postmarks will not be acceptable as proof of timely mailing. Applications not submitted on time will be returned.

ADDRESSES: Application materials may be obtained by calling or writing, and completed applications should be returned to: Grants Management Branch, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, 12100 Parklawn Drive, Rockville, Maryland 20857, (301) 443-5902.

Application for these grants will be made on Form PHS-5161 with revised facesheet DHHS Form 424, as approved by the OMB under control number 0937-0189. Specific instructions for completing the application form for this program will be sent to any State requesting an application package.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, please contact Ms. Cheryl A. LaPointe, National Health Service Corps, Bureau of Health Care Delivery and Assistance, HRSA, 5600 Fishers Lane, room 7A-39, Rockville, MD 20857, (301) 443-1470.

SUPPLEMENTARY INFORMATION: Section 338f of the PHS Act (42 U.S.C. 254q-1) authorizes the Secretary, acting through the Administrator of the HRSA, to make grants to States for the purpose of assisting the States in operating programs as described in this notice for the repayment of educational loans of health professionals in return for their practice in HPSAs to increase the availability of primary health services in HPSAs.

State Loan Repayment Programs eligible for funding under this

announcement must meet the following requirements:

(1) Be administered directly by a State agency.

(2) Pay all or part of the qualifying educational loans (including principal, interest and related educational loan expenses) of health professionals agreeing to provide service in HPSAs. "Qualifying loans" are government and commercial loans for actual costs paid for tuition, reasonable educational expenses, and reasonable living expenses relating to the graduate or undergraduate education of a health professional.

(3) Make assignment of participating health professionals only to public and nonprofit private entities located in and providing primary health services in HPSAs; and

(4) Have participant contracts which provide remedies for any breach of contract by participating health professionals.

Contracts provided by a State are not to be on terms that are more favorable to health professionals than the most favorable terms the Secretary is authorized to provide for contracts under the Federal NHSC Loan Repayment Program under section 338B of the PHS Act, including terms regarding:

(a) The annual amount of payments provided on behalf of the professionals regarding educational loans; and

(b) The availability of remedies for any breach of the contracts by the health professionals involved.

States are required to develop contracts that reflect a minimum of two years of obligated service. The annual amount of payments under a contract shall not exceed the maximum amount of \$35,000 authorized in section 338B(g)(2)(A) unless (1) this excess amount is paid solely from non-Federal contributions, and (2) the health professional involved will satisfy the requirement of obligated service solely through the provision of primary health services in a high need HPSA authorized to receive the assignment of an NHSC Scholarship Program recipient.

No loan repayments may be made for any professional practice performed prior to the effective date of the health professional's State Loan Repayment Program contract, and no credit may be given for any practice done while the provider is in a professional school or graduate training program.

Applications must identify the State entity and key personnel who would administer the grant and describe the qualifications and experience of that entity and its personnel concerning the

State's health service delivery system and health professional needs.

States seeking support under this notice for the cost of State Loan Repayment Programs must provide adequate assurances that:

(1) The State will make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than \$1 for each \$1 of Federal funds provided in the grant. In determining the amount of non-Federal contributions in cash that a State has to provide, other Federal funds may not be used.

(2) The State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing health services in HPSAs.

(3) The grant funds will not be expended to conduct activities for which Federal funds are awarded for State Primary Care Cooperative Agreements, State Primary Care Associations, and State Offices of Rural Health.

(4) Grant funds will be expended only for loan repayments to health professionals who have entered into contracts with States.

Future Support

The Secretary must determine that the State has complied with each of the agreements of the grant in order for funding to continue. Before making a grant for a subsequent year of State Loan Repayment Program support, the Secretary will, in the case of a State with 1 or more initial breaches by health professionals of the repayment contracts, reduce the amount of a grant to the State for the fiscal year involved by an amount equal to the sum of the expenditures of Federal funds made regarding the State Loan Repayment Programs contracts involved including interest on the amount of such expenditures, determined on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States. The Secretary may waive the reduction in the subsequent grant award if the Secretary determines that a health professional's breach was attributable solely to the professional having a serious illness.

Evaluation Criteria

The following criteria will be used to evaluate State applications to determine which States are to be supported under this notice: (a) The need of the State for health professionals consistent with the health professions and specialties identified in this notice; (b) the number

and type of providers the State proposes to support through this program; (c) the appropriateness of the proposed placement of State Loan Repayment recipients (e.g., extent to which State Loan Repayment Programs propose to place individuals in HPSAs with the greatest shortages); (d) the adequacy of the qualifications and the administrative managerial ability and experience of the State staff to administer and carry out the proposed project; (e) the suitability of the applicant's approach and the degree to which the applicant's plan is coordinated with Federal, State and other programs for meeting the State's health professional needs and resources, including mechanisms for evaluation of the program's activities; (f) the source and plans for the use of the State match (including the degree to which the State's matching funds are used for loan repayment rather than the administrative costs and the degree to which the State match exceeds the minimum requirements or has increased over time and the amount of the match relative to the needs and resources of the State); and (g) the extent to which special consideration will be extended to medically underserved areas with large minority populations.

Professions and Specialties Needed

To be supported under this program, the State Loan Repayment Program must establish State priorities for the selection of health professionals, consistent with the NHSC Loan Repayment Program. At this time, the Secretary has determined that under the NHSC Loan Repayment Program priority will be given to physicians who are certified or eligible to sit for the certifying examination in the specialty boards of family practice, osteopathic general practice, obstetrics/gynecology, internal medicine, and pediatrics. In addition, priority will be given to nurse midwives, nurse practitioners, and physician assistants who are certified or eligible to sit for the certifying examination in their profession.

Other Award Information

This program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs as implemented by 45 CFR part 100. Executive Order 12372 allows States and territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and

will provide a single point of contact (SPOC) in the States for that review.

Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

The OMB Catalog of Federal Domestic Assistance number for this program is 93.1165.

Dated: May 14, 1991.

Robert G. Harmon,
Administrator.

[FR Doc. 91-14298 Filed 6-14-91; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3281]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the

proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 11, 1991.

John T. Murphy,
Director, Information Policy and Management Division.

Proposal: Single Family Mortgage Insurance on the Allegany Reservation of the Seneca Indians.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This rule implements section 203(g) of the National Housing Act. The information is necessary to assure that borrowers fully realize their risks, and to document that remedies, other than assignment and foreclosure, have been exhausted.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of Response	×	Hours per response	=	Burden hours
Assignment request.....	10		5		.55		27.5

Total Estimated Burden Hours: 27.5.

Status: Extension.

Contact: Joseph Bates, HUD, (202) 708-1672, Wendy Swire, OMB, (202) 395-6880.

Dated: June 11, 1991.

[FR Doc. 91-14333 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3277]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an

information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 8, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Competitive Bidding for section 202 Direct Loan Program for Elderly or Handicapped.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Under section 202 of the Housing Act of

1959, competitive bidding on construction contracts is now mandatory except in certain specified instances. The procedures are similar to private competitive biddings rather than Government procurement as project owners are private entities. This information is needed to implement cost savings procedures for this direct loan program.

Form Number: HUD-92328, HUD-92442-A-EH, HUD-92450-EH, HUD-92452, EH, HUD-2554, HUD-2530 and HUD-92443.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection.....	200		1		40		8,000

Total Estimated Burden Hours: 8,000.

Status: Reinstatement.

Contact: Howard D. Mayfield, HUD, (202) 708-0035, Wendy Swire, OMB, (202) 395-6880.

Dated: May 8, 1991.

[FR Doc. 91-14329 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3278]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension,

reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 10, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Application for HUD/FHA Insured Mortgage, FR-2456.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Form HUD-92900-A and the related documents will determine the eligibility of the borrower and the proposed request for HUD/FHA insured mortgage. The form will be used by the mortgagee to obtain insurance.

Form: HUD-92900-A, 92561, 92544, 92900-WS and 59100.

Respondents: Individuals or Households, Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection.....	1,000,000		1		210		215,025

Total Estimated Burden Hours:**Status:** Revision.

Contact: Roxanne Zimmerman, HUD (202) 708-2700, Bud Carter, HUD (202) 708-2700, Wendy Swire, OMB, (202) 395-6880.

Dated: May 10, 1991.

[FR Doc. 91-14330 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-91-3279]

Submission of Proposed Information Collection to OMB**AGENCY:** Office of Administration, HUD.**ACTION:** Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and

Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and

hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 1991.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Title I Claim for Loss.**Office:** Housing.

Description of the Need for the Information and Its Proposed Use: Lenders in the Title I Insurance Program execute and submit this form to receive insurance benefits for claims filed on defaulted Title I property improvements and manufactured home loans. The information provided on this form is analyzed in determining the claim amount to be disbursed to the lender.

Form Number: HUD-637.**Respondents:** Business or Other For-Profit.**Frequency of Submission:** On Occasion.**Reporting Burden:**

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-637.....	4,000		3.0		.5		6,000

Total Estimated Burden Hours: 6,000.**Status:** Reinstatement.

Contact: Kenneth Knoll, HUD, (202) 708-0060, Wendy Swire, OMB, (202) 395-6880.

Dated: June 5, 1991.

Proposal: 24 CFR part 570 Proposed Amendments to the section 108 Loan Guarantee Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: This proposed rule would implement certain changes made to the section 108 Loan Guarantee Program by section 910 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990). The information collected pursuant to the proposed rule

would be used in reviewing applications from units of general local government and in evaluating compliance with statutory and administrative requirements applicable to the use of the guaranteed loan funds.

Form Number: None.**Respondents:** State or Local Governments.**Frequency of Submission:** Annually.**Reporting Burden:**

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application/Final Statement.....	50		1		39		1,950
Citizen Participation Plan	50		1		40		2,000
Relocation, Displacement Acquisition.....	50		1		5		250
Equal Employment Opportunity, HUD/EEO-4.....	50		1		1.25		63
Minority Business Enterprise	50		1		3.40		170

Total Estimated Burden Hours: 4,433.**Status:** New.

Contact: Paul D. Webster, HUD, (202) 708-1871, Wendy Swire, OMB, (202) 395-6880.

Dated: June 5, 1991.

Proposal: Program Utilization for use in the Section 8 Rental Certificate and Rental Voucher Programs.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Form HUD-52683 provides data to HUD to monitor the use of Certificates of Family participation, the number of families

under a HAP contract and rental voucher contract, and the degree of success experienced by program participants in locating and leasing suitable rental housing.

Form Number: HUD-52683.
Respondents: State or Local Governments.
Frequency of Submission: Monthly, Quarterly and Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD-52683	2,500		29.98		.25		18,740

Total Estimated Burden Hours: 18,740.

Status: Revision.

Contact: Gwen Carter, HUD, (202) 708-3887, Wendy Swire, OMB, (202) 395-6880.

Dated: June 5, 1991.

[FR Doc. 91-14331 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. 91-3280]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an

information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 10, 1991.

John T. Murphy,

Director Information Policy and Management Division.

Proposal: Public Housing—Contracting with Resident-Owned Businesses FR-2856.

Office: Public and Indian Housing.

Description of The Need for the Information and Its Proposed Use: Eligible resident-owned businesses must submit application information to Public Housing Agencies (PHAs) to be approved for noncompetitive contracting for work to be performed on public housing sites with an alternative to HUD's otherwise-required competitive procurement procedures.

Form Number: None.

Respondents: Individuals or Households, State or Local Governments, Non-Profit Institutions and Small Business or Organizations.

Frequency of Submission: One-Time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Rule 963.10	500		1		16		8,000
Rule 963.12 (a)	500		2		2		2,000

Total Estimated Burden Hours: 10,000.

Status: New.

Contact: Paul Fletcher, HUD, (202) 708-4214, Landry Williams, HUD, (202) 708-4214, Wendy Swire, OMB, (202) 395-6880.

Dated: June 10, 1991.

[FR Doc. 91-14332 Filed 6-14-91; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-921-01-4120-16;G-921-G1-210]

Establishment of Eastern Oklahoma Federal Coal Area Under Category 5

AGENCY: Bureau of Land Management, Interior.

ACTION: Notices and requests for information.

SUMMARY: This announcement gives notice that: (1) The lands within the nine (9) Oklahoma Counties of Atoka, Coal, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Pittsburg, and Sequoyah have been designated by the New Mexico State Office of the Bureau of Land Management as a Federal Coal

"Area", and that the State Director has, by his Decision, determined that said "Area" is now "Qualified" as eligible for "Category 5" royalty rate reductions in order to establish fair and competitive royalties, (2) the New Mexico State Office of the Bureau of Land Management, Minerals Division, is now accepting applications, or written notices of pending applications, for royalty reductions under "Category 5" for Federal Coal leased within the "Area", (3) the New Mexico State Office of the Bureau of Land Management is requesting that both private and Oklahoma coal industry sources apply data regarding the terms and royalties contained in private leases, (4) the New Mexico State Office of the Bureau of Land Management is calling for input from all sources regarding what the royalty rates for Federal Coal—mined by both surface and underground methods—should be, and (5) the approval date for BLM Manual 3485—Reports, Royalties, and Records, which contains the guidelines for "Category 5" Federal Coal royalty reductions, was December 17, 1990; therefore, all reduced royalties resulting from applications, or written notices of pending applications, received prior to the close of business on September 30, 1991, shall have an effective date for the reduced royalties retroactive to December 17, 1990.

DATES: Comments and/or information must be submitted, or postmarked, on or before July 17, 1991.

ADDRESSES: Comments and/or information may be mailed to the Bureau of Land Management, New Mexico State Office, Minerals Division (Mail Stop 924), P.O. Box 1449, Santa Fe, New Mexico 87504-1449.

FOR FURTHER INFORMATION CONTACT: Mr. Darwyn F. Pogue, Minerals Appraiser, Branch of Appraisals and Evaluations, Minerals Division, New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Mail Stop 924, Santa Fe, New Mexico 87504-1449, Comm. Phone (505) 988-6186.

(1) Notice of the Decision by the BLM NM State Director of the Qualification for a Designated "Area" of Oklahoma Federal Coal for "Category 5" Royalty Rate Reductions, (2) Notice of Acceptance of Applications of Royalty Reduction Requests for "Category 5" Oklahoma Federal Coal, (3) Request for Data Input from Public and Industry Sources Regarding Private Coal Lease Terms and Royalties, (4) Request for

Suggestions and Recommendations for Federal Coal Lease Royalties (Surface and Underground) within the Oklahoma "Area", and (5) Notice that the effective date of all approved "Category 5" royalty reductions resulting from applications, or written notices of pending applications, received no later than the close of business on September 30, 1991, shall have an effective date for the approved reduced royalty of December 17, 1990, the date of the approval of BLM Manual 3485—Reports, Royalties, and Records.

SUPPLEMENTARY INFORMATION:

According to data contained in the latest Annual Report to the Governor of Oklahoma by the Oklahoma Mining Commission, Department of Mines, the nine (9) Oklahoma Counties of Atoka, Coal, Haskell, Latimer, LeFlore, McIntosh, Muskogee, Pittsburg, and Sequoyah contain approximately 80% of the known and identified coal resources of Oklahoma, as determined by the latest study of the Oklahoma Geological Survey. These same nine (9) counties also contain 100% of the known Federally owned and economically recoverable coal resources in Oklahoma. The Federally owned coal resources are "acquired minerals" contained within coal deposits that were purchased from the Choctaw and Chickasaw Native American Tribes in the late 1940's. Therefore, the New Mexico Bureau of Land Management State Director has concluded that the aforementioned nine (9) counties shall be designated as a Federal Coal Area, hereinafter referred to as the "Area", for the purposes of minerals management under the guidelines set forth in Bureau of Land Management (BLM) Manual 3485—Reports, Royalties, and Records, and in 43 CFR Part 3485.2, Royalties (Coal). BLM Manual 3485 sets forth five (5) Categories by which the holder and/or operator of a Federal Coal Lease may apply for a royalty that is less than the base royalty stated in the lease. Categories 1 through 4 refer to royalty reductions based mainly upon mining and financial criteria, or combinations thereof, that are specific to the mining operation requesting relief. Category 5, however, refers to royalty reductions granted within a designated State or Area that the BLM has concluded to have met all of the following criteria:

1. The Federal Government is not market dominant.
2. Federal royalty rates are above the

current market royalty rates for non-Federal coal in the Area.

3. Federal coal would be bypassed or remain undeveloped due to royalty rate differentials.

4. The above conditions exist throughout the Area.

5. A royalty rate reduction under this Category is not likely to result in undue competitive advantages over neighboring areas.

As a result of a "Qualification Study" completed recently by the Minerals Division of the New Mexico BLM, the State Director has determined that the Area under discussion has successfully met all five (5) of the above criteria. Therefore, the State Director has issued his decision that said Area is now "Qualified" for the royalty reductions allowed under Category 5. This will allow operators and/or holders of Federal Coal leases within the Area the opportunity to obtain fair and competitive royalty rates.

Since the Area is now Qualified, the Mineral Division of the New Mexico BLM will now accept applications for royalty reduction requests under Category 5 for existing coal leases within the Area. Written notices of pending applications will also be accepted. All applications and notices of pending applications shall be directed to the New Mexico BLM Minerals Division in accordance with the guidelines set forth in BLM Manual 3485, and all required supporting documentation, etc., must be included. Any one anticipating that they will be making a royalty reduction request under Category 5 is urged to carefully read the 3485 Manual and request guidance from the Staff of the New Mexico BLM Minerals Division if there are any doubts or questions.

Now that there is an Area in Oklahoma that is Qualified for Category 5 royalty rate reductions, the New Mexico BLM Minerals' staff must now determine the proper minimum royalty rates for Federal Coal in the Area. Therefore, both the general public and those within the Oklahoma coal industry are now requested to come forth and provide information regarding the terms, conditions, and royalties that are contained in coal leases negotiated in the private coal leasing market in Oklahoma. All information received will be held as strictly confidential by the staff, and, upon request, will be returned to the provider without being copied or revealed to unauthorized persons. Actual copies of coal leases and/or contracts of surface owner agreements

(in "split-estate" situations) will be the most helpful; however, any information will be welcomed. Although the information received will not be copied, etc., it will be cataloged as to terms, conditions, and royalties in such a manner as not to reveal any specific cases between specific parties. If information is available that will indicate that there are different parameters associated with single seam coal deposits than with multiple (two or more) seam coal deposits, such information will be greatly appreciated. If there is information that indicates that there are different terms, conditions, and royalties associated with coal minable by underground methods that are different from those associated with surface minable coal, this information will also be greatly appreciated.

If there are any data within the Area coal market that would tend to indicate what royalty rate, or rates, would be the most appropriate minimum rates to be assigned to Federal Coal, the New Mexico BLM is now calling for this to be made available. Again, data that indicates a difference, or lack of, between underground and surface minable coal, and single seam and multiple seam coal deposits will be welcomed.

Due to the delay in the processing of the necessary data for the preparation of the Qualification Statement, any, and all, applications, or written notices of pending applications, that are received, or post marked, prior to the close of business on September 30, 1991, that result in a royalty rate reduction shall carry the approved new royalty as if it were granted effective as of December 17, 1990, the date of approval of BLM Manual 3485, will the associated adjustments to royalties paid, if any, to be made by the Minerals Management Service.

There shall be a cut off date for when the above requested information will be considered as part of the Royalty Reduction Study of 30 days from the date of publication of this notice in the Federal Register.

All Oklahoma coal operators that are listed in the latest report of the Oklahoma Mining Commission, Department of Mines, have been mailed a copy of the above notice.

Dated: May 31, 1991.
 Gil Lockwood,
 Deputy State Director, Minerals Division.
 [FR Doc. 91-14156 Filed 6-14-91; 8:45 am]
 BILLING CODE 4310-FB-M

[UT-060-01-4410-14]

Moab District Advisory Council Meeting

June 11, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Moab District Advisory Council meeting.

SUMMARY: The Moab District Advisory Council will meet Tuesday and Wednesday, July 16 and 17, 1991. The business meeting will be held in the Conference Room of the BLM Moab District Office, 82 E. Dogwood, Moab, Utah beginning on the 16th at 10 a.m. and adjourning at 4:30 p.m., followed by a field trip on the 17th.

The agenda for the July 16 business meeting will be an orientation by program leaders and Area Managers for the newly appointed Council members, and election officers. The orientation will highlight the major program issues in the divisions of Planning and Environmental Coordination, Lands and Renewable Resources, and Minerals, and in the four Resource Areas. Also on the agenda are new business, opportunity for public comment, finalization of resolutions, and adjournment.

The July 17 field trip will depart from the Moab District Office at 8 a.m. and will include a visit to areas near Moab proposed for oil and gas exploration and related issues concerning recreation, wildlife, environmental concerns, and nearness to State and National Parks. The public is welcome to tour with the group and to attend the business meeting, however, they would need to supply their own transportation and food.

All Advisory Council meetings are open to the public. Persons wishing to make a comment to the Council must notify the BLM by July 12. Depending on the number of people desiring to make a statement, a per-person time limit may be established so that all may be heard. For further information, contact: Mary Plumb, Public Affairs Officer, P.O. Box 970, Moab, Utah 84532. Phone (801) 259-6111.

Kenneth V. Rhea,
 Acting District Manager.

[FR Doc. 91-14391 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-CQ-M

Recreation Management Restrictions, Campbell Tract Anchorage, AK

AGENCY: Bureau of Land Management, Interior.

ACTION: Use Restriction on Public Lands.

SUMMARY: Notice is hereby given that effective July 15, 1991, animals brought into the Campbell Tract in Anchorage, Alaska must be leashed. Animals may be secured to a fixed object or under the control of a person or physically restricted. Legal descriptions and maps of the 730 acres of public land are available from the Anchorage District Office, Anchorage, Alaska.

EFFECTIVE DATES: The leash policy is effective July 15, 1991 and remains in effect indefinitely.

FOR FURTHER INFORMATION CONTACT: Jake Schlapfer, Outdoor Recreation Specialist, Anchorage District Office, 6881 Abbott Loop, Anchorage, Alaska 99507 (907) 267-1232.

Richard J. Vernimen,
 Anchorage District Manager.

[FR Doc. 91-14296 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-JA-M

[ID-942-01-4730-12]

Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., June 4, 1991.

The plat representing the dependent resurvey of portions of the subdivisional lines and boundaries of Homestead Entry Survey No. 447, T. 24 N., R. 3 E., Boise Meridian, Idaho, Group No. 800, was accepted, June 3, 1991.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service, Region 1, Nez Perce National Forest.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 4, 1991.
 Duane E. Olsen,
 Chief Cadastral Surveyor for Idaho.
 [FR Doc. 91-14310 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-GG-M

[ID-942-01-4730-12]

Filing of Plats of Survey; Idaho

The official filing of the following described plat has been stayed, pending potential administrative review of an official decision issued May 31, 1991, on protests filed against the dependent resurvey represented by this plat.

The plat representing the dependent resurvey of portions of the east

boundary, subdivisional lines, the subdivisions of sections 12 and 13, and original meanders of the left bank of the Clearwater River in section 13; the survey of the subdivision of sections 12 and 13, the informative traverse and survey of the meanders of a portion of the present left bank of the Clearwater River in section 13, and metes-and-bounds surveys in sections 12 and 13, T. 33 N., R. 3 E., Boise Meridian, Idaho, Group No. 782, was accepted on May 31, 1991.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: June 4, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 91-14311 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-GG-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Charles McKay, Nashville, TN (PRT 758848).

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd of Michael Weinand, Longwood, Bedford, South Africa, for enhancement of propagation of the herd.

Applicant: Columbus Zoo, Powell, OH (PRT 758673).

The applicant requests a permit to import one wild-born female Asian elephant (*Elephas maximus*) from the Chipperfield Organization, Warminster, Wiltshire, England, for public display, education, and breeding purposes.

Applicant: USFWS, Regional Director, region 4, Atlanta, GA (PRT 697819).

The applicant requests amendment to their current permit to include take of no common name (*Schoepfia arenaria*), Schweinitz's sunflower (*Helianthus schweinitzii*), leafy prairie-clover (*Dalea foliosa*), silver rice rat (*Oryzomys palustris natator*), and Cumberland pigtoe (*Pleurobema gibberum*) for the purpose of scientific research and

enhancement of propagation or survival of the species as prescribed by Service recovery documents.

Applicant: Gibbon & Gallinaceous Bird Center, Santa Clarita, CA (PRT 758783).

The applicant requests a permit to import three males and one female dark-handed gibbons (*Hylobates agilis unko*) from Wellington Zoological Garden, New Zealand, for captive breeding and scientific research. One male was removed from the wild, Malaysian peninsula, in 1975, the other two males and one female were captive-born.

Applicant: William Seegar, U.S. Army Chemical Research, Development & Engineering Center, Aberdeen Proving Ground, MD (PRT 675769).

The applicant requests renewal of their permit to take (capture for blood sampling, radio tagging, banding/marking, and salvage) American peregrine falcons (*Falco peregrinus anatum*) and Arctic peregrine falcons (*F. p. tundrius*) throughout the conterminous United States for the purpose of scientific research and enhancement of propagation and survival of these species.

Applicant: Robert L. Gelles, Fairfax Station, VA (PRT 758465).

The applicant requests a permit to import the sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by H.v.Z. Kock, Verborghfontein Game Ranch, Merriman, South Africa, for enhancement of propagation of the species.

Applicant: U.S. Fish and Wildlife Service, National Ecology Research Center, Fort Collins, CO (PRT 720136).

The applicant requests renewal of their permit to take (harass, anesthetize, capture, weight, measure, photograph, examine, radio-tag, and monitor) black-footed ferrets (*Mustela nigripes*) and salvage dead black-footed ferrets and parts thereof, for purposes of scientific research and enhancement of propagation and survival. Applicant has also requested amendment to release captive ferrets into the wild for the reintroduction program and may recapture released ferrets. Activities may be conducted in the following States: CO, KS, MT, NE, NM, ND, OK, WY, SD, TX, UT, & AZ.

Applicant: The Peregrine Fund, Inc., Boise, ID (PRT 756778).

The applicant requests a permit to import one wild-caught female Harpy eagle (*Harpia harpyja*) from The Propagation Center for Panamanian

Endangered Species, Panama, for captive propagation purposes.

Applicant: The Peregrine Fund, Inc., Boise, ID (PRT 759017).

The applicant requests a permit to export up to 20 captive-hatched Mauritius kestrels (*Falco punctatus*) to Mauritius Wildlife Appeal Fund, Port Louis, Mauritius, for release purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone (703/358-2104); FAX (703/358-2281).

Dated: June 11, 1991.

Maggie Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 91-14281 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 25, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by July 2, 1991.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Mobile County

Convent and Academy of the Visitation (Historic Roman Catholic Properties in Mobile MPS), 2300 Springhill Ave., Mobile, 91000844

Convent of Mercy (Historic Roman Catholic Properties in Mobile MPS), 753 St. Francis St., Mobile, 91000845

Saint Francis Xavier Roman Catholic Church
(Historic Roman Catholic Properties in
Mobile MPS), 2034 St. Stephens Rd.,
Mobile, 91000842

Saint Joseph's Roman Catholic Church
(Historic Roman Catholic Properties in
Mobile MPS), 808 Springhill Ave., Mobile,
91000841

Saint Matthew's Catholic Church (Historic
Roman Catholic Properties in Mobile
MPS), 1200 S. Marine St., Mobile, 91000840

Saint Vincent de Paul (Historic Roman
Catholic Properties in Mobile MPS), 351 S.
Lawrence St., Mobile, 91000839

Stone Street Cemetery, (Historic Roman
Catholic Properties in Mobile MPS), 1700
Martin Luther King, Jr., Blvd., Mobile,
91000843

NEBRASKA

Cheyenne County

Sidney Carnegie Library (Carnegie Libraries
in Nebraska MPS), 740 Illinois St., Sidney,
91000838

Douglas County

Steiner Rowhouse No. 1, 638-642 S. 19th St.,
Omaha, 91000836

Steiner Rowhouse No. 2, 1906-1910 Jones St.,
Omaha, 91000837

Saunders County

O.K. Market, 542 N. Linden Ave., Wahoo,
91000835

VIRGINIA

Buckingham County

*Seven Islands Archeological and Historic
District*, Address Restricted, Arvonnia
vicinity, 91000832

Chesterfield County

Dinwiddie County Pullman Car, Hallsboro
Yard, NE of jct. of VA 806 and VA 671,
Midlothian vicinity, 91000834

Greensville County

Batte, Alexander Watson, House, S side VA
612, 1500 ft. W of jct. with VA 651, Jarratt
vicinity, 91000831

Montgomery County

*Kentland Farm Historic and Archeological
District* (Montgomery County MPS), At end
of VA 623 along New R., Blacksburg
vicinity, 91000833

Smyth County

Chilhowie Methodist Episcopal Church, 501
Old Stage Rd., Chilhowie, 91000830

Roanoke Independent City

Henry, Patrick, Hotel, 617 Jefferson St. S.,
Roanoke (Independent City), 91000829

[FR Doc. 91-14355 Filed 6-14-91; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31892]

American European Express, Inc.— Operation Exemption—Between Chicago, IL, and New York, NY; Exemption

American European Express, Inc. (AEE), filed a notice of exemption to operate as a Class III rail carrier of passengers over approximately 1,020 miles of track between Chicago, IL, and New York, NY, via Indianapolis, IN, White Sulphur Springs, WV, Washington, DC, Baltimore, MD, Wilmington, DE, and Philadelphia, PA.

Between Chicago and Washington, under an agreement between AEE and CSX Transportation, Inc. (CSX), AEE's passenger cars are to be pulled by engines operated by CSX over tracks it owns or is authorized to operate. Between Washington and New York, under an agreement between CSX and the National Railroad Passenger Corporation (Amtrak), AEE's cars are to be pulled attached to regularly scheduled Amtrak passenger trains. The transaction already has been consummated. AEE had previously operated as an adjunct of Amtrak. It has now expanded into operating its own trains, between certain points, not in conjunction with Amtrak or any other rail carrier.

Any comments must be filed with the Commission and served on: Robert E. Stigger, Portes, Sharp, Herbst & Fox, Ltd., 333 West Wacker Drive, suite 500, Chicago, IL 60606.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: June 11, 1991.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-14349 Filed 6-14-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31283 (Sub-No. 1)]

Norfolk Southern Railway Company— Trackage Rights Exemption—Norfolk and Western Railway Company; Exemption

Norfolk and Western Railway Company (NW) has agreed to grant unrestricted trackage rights to its wholly owned subsidiary, Norfolk Southern Railway Company (NS), formerly known as Southern Railway Company, over a 63-mile line of railroad between milepost H-63, at Front Royal, VA, and milepost H-0, at Hagerstown, MD. NW is a class I railroad controlled through stock ownership by Norfolk Southern Corporation (NSC), a non-carrier holding company. NS and its rail carrier subsidiaries operate a rail system extending throughout the Southeast and Midwest.

NW had previously granted NS overhead trackage rights on this line. See Finance Docket No. 31283, Southern Railway Company—Trackage Rights Exemption—Norfolk and Western Railway Company (not printed), served June 16, 1988, and published in the *Federal Register* (53 FR 24155) on June 27, 1988. The purpose of this exemption is to remove any restriction on the trackage rights granted to NS. The trackage rights became effective April 23, 1991.

This notice is filed under 49 CFR 1180.2(d) (3) and (7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Nancy S. Fleischman, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: June 10, 1991.

By the Commission, David M. Konschnik,
Director, Office of Proceedings.

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-14350 Filed 6-14-91; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31875]¹**Consolidated Rail Corp.—Merger—
Monongahela Railway Co.****AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of decision accepting application for consideration.

SUMMARY: The Commission is accepting for consideration the application filed May 17, 1991, by Consolidated Rail Corporation and Monongahela Railway Company (MGA) (collectively applicants). The application is filed under 49 U.S.C. 11343, *et seq.*, for MGA to merge into Conrail. The application also seeks approval: (1) In (Sub-No. 1) to assume MGA's position as lessee of the Waynesburg Southern Railway (WSRR) properties; and (2) in (Sub-No. 2) to assume MGA's position as lessee of a certain CSX Transportation rail line. The Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than July 17, 1991, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by August 1, 1991. The Commission will issue a service list shortly thereafter. Parties must serve comments on all parties of record within 10 days of the Commission's issuance of a service list. The parties must also file a certificate of service with the Commission, indicating that all designated individuals and organizations on the service list in this proceeding have been properly served. Applicants' reply is due August 26, 1991.

ADDRESSES: Send an original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31875, Interstate Commerce Commission, Washington, DC 20423. In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and applicants' representatives:

Docket Clerk, Office of Chief Counsel,
Federal Railroad Administration,
room 8201, 400 Seventh Street, SW,
Washington, DC 20590.

¹ This proceeding also embraces Finance Docket No. 31875 (Sub-No. 1), Consolidated Rail Corporation—Lease Assumption—Waynesburg Southern Railway Properties (Sub-No. 1); and Finance Docket No. 31875 (Sub-No. 2), Consolidated Rail Corporation—Lease Assumption—CSX Transportation Rail Line (Sub-No. 2).

Attorney General of the United States,
United States Department of Justice,
10th & Constitution Avenue, NW,
Washington, DC 20530.

Constance L. Abrams, Anne E.
Treadway, Consolidated Rail
Corporation, 1138 Six Penn Center,
Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT:
Joseph H. Dettmar (202) 275-7245 [TDD
for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Conrail and MGA filed an application on May 17, 1991, for MGA to merge into Conrail. The application in Finance Docket No. 31875 is filed under 49 U.S.C. 11343, *et seq.*. The application also seeks approval: (1) In Sub-No. 1 to assume MGA's position as lessee of the Waynesburg Southern Railway properties; and (2) in Sub-No. 2 to assume MGA's position as lessee of a certain CSX Transportation (CSXT) rail line. Applicants state that this is a minor transaction under 49 CFR 1180.2(c) and our decision in Finance Docket No. 31630, Consolidated Rail Corporation—Control—Monongahela Railway Company (not printed), served August 16, 1990 (*MGA Control*).

Conrail is a Class I rail carrier and MGA is a Class II rail carrier (revenues were \$43.5 million in 1990). Conrail holds all of MGA's stock. Conrail obtained Commission authority to control MGA's stock in *MGA Control* where the Commission approved the acquisition of Pittsburgh & Lake Erie's (P&LE) and CSXT's MGA stock. As a result of transactions approved in that case, Conrail now holds 100 percent of the capital stock of MGA and is the sole guarantor of the WSRR bonds.

MGA operates 162 route miles in West Virginia and southwestern Pennsylvania and handles almost exclusively coal traffic. MGA consists of two branches that meet at Brownsville, PA. The West Division runs west from Brownsville across the Monongahela River to West Brownsville and then generally southwest, terminating 55 miles from Brownsville at Blackville, WV. Part of this division is Conrail-owned. The first 13.5 miles, from Brownsville to Besco, PA, is owned by Conrail but MGA operates on trackage rights under a 1927 agreement. (The agreement will terminate by virtue of merger.) The next 15.1 miles of track, from Besco to Waynesburg, are owned by MGA. The last 27 miles were formerly owned by the WSRR and are leased to MGA until 1998. The WSRR's assets were conveyed to Conrail in the Final System Plan. I United States Railway Association, Final System Plan 228 and n. 13 (1975).

The West Division also connects with the "Manor Spur," constructed and owned by Consol Pennsylvania Coal Company (CPCC) to reach its Bailey Mine. The MGA operates the Manor Spur under a contract with CPCC.

The other MGA branch, the East Division, runs from Brownsville, south along the Monongahela River, and terminates at Fairview (also called Loveridge), a length of 79 miles. CSXT owns the first 5.2 miles of a branch line from Catawba Junction to Grant Town on which MGA holds a 99 year lease. The segment from Grant Town to Loveridge is owned by MGA.

CSXT connects with MGA near the south end of the East Division at Rivesville, WV; Pittsburgh & Lake Erie (P&LE) connects with MGA at Brownsville Junction, PA, on the north end of the East Division; and Conrail connects with MGA on the north end of the West Division at West Brownsville, PA.

In the Sub-No. 1 proceeding, Conrail seeks to assume MGA's position as lessee under a lease between MGA and WSRR. The Waynesburg Southern Branch was the only line of the WSRR, a wholly-owned corporate subsidiary of Penn Central Company (PC). To finance construction, WSRR issued \$20 million, 7¼ percent First Mortgage Bonds, due September 1, 1993. The bonds were guaranteed by the then-owners (PC, P&LE, and the Baltimore & Ohio Railroad [B&O]), and the WSRR line was leased to the MGA for a 30 year term to August 31, 1998.²

In the Sub-No. 2 proceeding, Conrail seeks to assume MGA's position as lessee for a 5.2 mile line from CSXT (formerly B&O). In 1927, MGA leased a new rail line from B&O between Catawba Junction and Grant Town, where a new mine was opened. The lease term is 99 years, with an MGA option to extend the lease for an indefinite number of 99 year terms.

Applicants contend that the proposed transaction will not substantially reduce competition, create a monopoly, or restrain trade in freight surface transportation in any region of the United States. According to applicants, they expect to gain significant operating efficiencies by merging. They anticipate they will accomplish these efficiencies by: (1) Removing the current MGA-Conrail interchange at West Brownsville on traffic to/from Conrail and moving the crew change point to Waynesburg to maximize the road train mileage; (2) consolidating maintenance-of-way and

² Conrail is now the sole guarantor of the WSRR as a result of the approval in the MGA Control case.

clerical functions; (3) centralizing the train and crew dispatching functions; (4) modernizing the MGA's maintenance-of-way equipment; and (5) constructing or rehabilitating certain lines to improve capacity and speed operations.

Applicants allege that a merger will not lessen competition. Since MGA is almost exclusively a coal-hauling railroad with over 80 percent of its traffic interchanged to Conrail, applicants state that MGA and Conrail do not compete for traffic. Applicants submit that the remaining traffic is interchanged to P&LE and CSXT, which will continue to possess the same contractual interchange rights as they negotiated in their stock purchase agreements. Conrail's stock purchase agreement with P&LE provided that P&LE would continue to enjoy interchange rights with MGA on a nondiscriminatory basis. Applicants state that P&LE is protected since this provision was made a part of the MGA Control decision.

Applicants contend that CSXT is protected since, under Conrail's stock purchase agreement with CSXT, Conrail agreed to maintain its contract revenue needs at certain specified levels for eight years. After that, new levels will be established "which shall not preclude CSXT from competing, to the extent it otherwise could, in the markets for MGA coal * * *."

Applicants contend that the same competitive analysis found in MGA Control should apply here because there will be no net reduction in competition—the mines served by one carrier (MGA) will continue to be served by one carrier (Conrail). Applicants also state that no adverse consequences will befall MGA's connections, P&LE, or CSXT or their connections (such as Bessemer and Lake Erie) because those carriers will be protected to the same degree as when Conrail was acquiring control of MGA.

Applicants allege that merger will allow better customer service because customers can deal with one carrier, not two, and the customers can realize the benefits from cost reductions resulting from a more efficient system. Applicants contend that a merger will allow Conrail to compete with its coal-hauling competitors, Norfolk Southern Railway and CSXT.

Applicants state that about 50 positions (basic and seasonal) would be eliminated. If merger approval is granted, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), *aff'd sub nom. New*

York Dock Ry. v. U.S., 609 F.2d 83 (2d Cir. 1979).

Under 49 CFR 1180.4(b)(2)(iv), we must determine whether a proposed transaction is major, significant, minor, or exempt. The proposal involves a Class I (Conrail) and a Class II (MGA) rail carrier. The proposal has no regional or national significance and will not result in a major market extension. As noted, *supra*, MGA interchanges more than 80 percent of its traffic with Conrail and the other connecting carriers are protected by commercial agreements. *See also MGA Control* decision served April 25, 1990. Accordingly, we find the proposal to be a minor transaction under 49 CFR 1180.2(c). Since the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including government entities, may participate in this proceeding by submitting written comments. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative for service;

(c) The commenting party's position; *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment upon the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all

discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The application in Finance Docket No. 31875 and Finance Docket No. 31875 (Sub-Nos. 1 and 2) is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective on June 17, 1991.

Decided: June 11, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14410 Filed 6-14-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Consent Judgment in Action to Enjoin Violations of the Clean Air Act; Hussmann Corp.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that in *United States v. Hussmann Corp.*, (E.D. Mo.), Civil Action No. 89-1174C(1) an Order and a Consent Decree was lodged with the United States District Court for the Eastern District of Missouri on April 10, 1991. The Order provides for interim compliance measures, an environmental audit, penalties, and a procedure for either a revision of the Missouri State Implementation Plan or a plant process change. The Consent Decree requires Hussmann Corp. to comply with the federally enforceable site specific Missouri State Implementation Plan ("SIP") for its Bridgeton facility.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Order and/or the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. Hussmann Corporation*, D.O.J. Ref. No. 90-5-2-1-1255.

The proposed Consent Decree and the Order may be examined at the Offices of the United States Attorney, Eastern District of Missouri, 1114 Market Street, St. Louis, Missouri; at the Region VII Office of the Environmental Protection

Agency ("EPA"), 726 Minnesota Avenue, Kansas City, Kansas; and the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004. A copy of the proposed Consent Decree and the Order may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy of the Decree and Order, please enclose a check for copying costs in the amount of \$12.25 payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14313 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to CERCLA in United States v. Iowa Electric Light & Power Co.

In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9622(i) ("CERCLA"), and Departmental policy at 28 CFR 50.7, notice is hereby given that on May 24, 1991, a proposed Consent Decree in *United States v. Iowa Electric Light & Power Company*, Civil Action No. 4-91-80313 was lodged with the United States District Court for the Southern District of Iowa, Central Division.

The complaint in this action was filed on May 24, 1991, against Iowa Electric Light & Power Company under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in responding to the release or threat of release of hazardous substances from the Site, which consists of a Fairfield Coal Gasification Plant in Fairfield, Iowa. The proposed Consent Decree requires Iowa Electric Light & Power to finance and perform certain remedial action, maintenance and monitoring activities at the Site.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States v. Iowa Electric Light & Power Company*, Department of Justice #90-11-2-631.

The proposed Consent Decree may be

examined at the office of the United States Attorney, Southern District of Iowa, Central Division, 115 U.S. Courthouse, East First and Walnut Streets, Des Moines, Iowa 50309, and the United States Environmental Protection Agency, region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree can be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. When requesting a copy, please refer to *United States v. Iowa Electric Light & Power Company*, DOJ #90-11-2-631, and enclose a check in the amount of \$17.50 (\$.25/page) payable to "Treasurer of the United States."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14307 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 4, 1991, a proposed Consent Decree in *United States v. Peirce, et. al.*, No. 83-CV-1623, was lodged with the United States District Court for the Northern District of New York. The complaint in this action was filed pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, to recover costs incurred by the Environmental Protection Agency ("EPA") in taking response actions at the York Oil Superfund Site located in Moira, Franklin County, New York ("Site").

The proposed Consent Decree embodies an agreement by defendant Aluminum Company of America ("Alcoa") to design and implement a phase I remedy selected by EPA for the cleanup of a hazardous waste lagoon area located on the Site. The cost of this remedial work is expected to be approximately \$7 million. In addition, Alcoa has agreed to perform the subsequent operation and maintenance for this remedial work, which is

estimated to cost approximately \$500,000. Alcoa has also agreed to reimburse EPA for 30% of its periodic review and oversight costs up to a total of \$175,000.

The Decree is a mixed funding decree, as it also contains an agreement by the EPA Hazardous Substances Superfund to contribute the lesser of \$3,370,000 or 48% of the reasonable and necessary costs of the remedial work.

The Consent Decree also includes an agreement by certain federal facilities which contributed waste to the Site, the Department of the Army and the Department of the Air Force, to pay \$1,875,000 into the York Oil Trust Fund, to be applied toward the cost of this cleanup.

With respect to the recovery of past costs, the Consent Decree requires Alcoa to reimburse EPA for \$795,000 of the costs already incurred by EPA. The federal facilities have agreed to reimburse EPA in the amount of \$636,846.98 for EPA's past costs. Thus, the settlers will reimburse EPA for \$1,431,846.98, or approximately 50%, of EPA's approximately \$2.9 million in past costs for the phase I work at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Peirce, et. al.*, D.O.J. Ref. 90-5-2-1-585.

The proposed Consent Decree may be examined at the region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York, 10278, at the office of the United States Attorney, Federal Building and Courthouse, 15 Henry Street, Binghamton, New York 13901, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (202-347-2072).

A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Box 1097, Washington, DC 20004. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$47.75 (25 cents per page reproduction cost) for the Consent Decree and all attachments or in the

amount of \$18.50 for the Consent Decree without attachments.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14306 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; Savage Enterprises et al.

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on May 30, 1991, a proposed consent decree in *United States v. Savage Enterprises, Inc. et al.*, Civil Action No. C89-1263Z, was lodged with the United States District Court for the Western District of Washington. The complaint, as amended, alleged violations by defendants Savage Enterprises, Inc., James Savage, and James Walsh of section 112 of the Clean Air Act, 42 U.S.C. 7412, and various work practice standards in the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos, at 40 CFR part 61, subpart M. The complaint sought injunctive relief and civil penalties for past violations. The proposed consent decree settles the case with respect to Savage Enterprises, Inc. and James Savage by imposing a total civil penalty of \$5,000 as well as certain injunctive relief. The case against defendant James Walsh is still ongoing since Mr. Walsh has declined to enter into the proposed consent decree.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Savage Enterprises, Inc. et al.*, Department of Justice reference number 90-5-2-1-1306.

The proposed consent decree may be examined at the office of the U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101 and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington DC 20004, (202) 347-2072. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of \$2.25 (25 cents per page reproduction costs)

payable to "Consent Decree Library." When requesting a copy, please refer to *United States v. Savage Enterprises, Inc.*, Department of Justice 90-5-2-1-1306.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14314 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 7, 1991, a proposed consent decree in *United States v. City of San Jose, California, and A.J. Raisch Paving Co.*, Civil Action No. C91-20337-JW, was lodged with the United States District Court for the Northern District of California. The Complaint filed by the United States alleges that the defendants arranged for the transportation or disposal of hazardous substances in the construction of a ring levee located in Alviso, California (the facility); that there have been releases of hazardous substances into the environment from the facility, which releases have caused the United States to incur response costs; and that there is or may be an imminent and substantial endangerment to the public health, welfare, or the environment because of the actual or threatened releases. The complaint seeks injunctive relief to require the defendants to abate and remedy the imminent and substantial endangerment and the effects of the actual or threatened releases from the facility. The complaint further seeks the reimbursement of past costs which were incurred by the United States in responding to the actual or threatened releases. The consent decree requires the defendants to implement fully the remedy selected by the Environmental Protection Agency as set forth in the Agency's Record of Decision, as amended, and to pay the United States \$736,023.00 in reimbursement for past costs.

In addition, the complaint states a cause of action against the City of San Jose under Sections 301, 309, and 404 of the Clean Water Act, 33 U.S.C. 1301, 1309, and 1344, for constructing the ring levee in wetlands without a permit. The consent decree requires the City to perform work to restore wetlands and to mitigate for their temporal loss.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication,

comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States v. City of San Jose and A.J. Raisch Paving Co.*, D.J. Ref. 90-11-2-353.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of California, 450 Golden Gate Avenue, San Francisco, California, and at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., Suite 600, Washington, DC 20004, 202-347-7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of \$40.50 for the decree plus its attachments (25 cents per page reproduction costs) payable to Aspen Systems Corporation. When requesting a copy, please refer to *United States v. City of San Jose and A.J. Raisch Paving Co.*, D.J. Ref. 90-11-2-353.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-14316 Filed 6-14-91; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals To Serve as Members of Performance Review Boards

5 USC 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1989 and ending September 30, 1990.

Name and Title

Robert E. Allen—Associate General Council, Advice

Harold J. Datz—Chief Counsel to Board Member

Joseph E. DeSio—Associate General Counsel, Operations Management
 Yvonne T. Dixon—Assistant General Counsel, Office of the General Counsel
 Frederick Freilicher—Chief Counsel to Board Member
 D. Randall Frye—Acting Deputy General Counsel
 John E. Higgins—Solicitor
 Susan Holik—Chief Counsel to Board Member
 Gloria J. Joseph—Director of Administration
 Barry J. Kearney—Deputy Associate General Counsel, Advice
 Joseph E. Moore—Deputy Executive Secretary
 S.F. Timothy Mullen—Deputy Director of Administration
 Anne G. Purcell—Chief Counsel to Board Member
 Mary M. Shanklin—Director, Office of Appeals
 W. Garrett Stack—Deputy Associate General Counsel, Operations Management
 Elinor H. Stillman—Chief Counsel to the Chairman
 Berton B. Subrin—Director, Office of Representation Appeals
 John C. Truesdale—Executive Secretary
 Melvin J. Welles—Chief Administrative Law Judge

Dated: Washington, DC June 11, 1991. By
 Direction of the Board.

John C. Truesdale,
 Executive Secretary.

[FR Doc. 91-14250 Filed 6-14-91; 8:45 am]

BILLING CODE 7450-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Applications of Advanced Technologies; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Applications of Advanced Technologies, Education and Human Resources.

Date and Time: June 28 and 29, 1991, from 6 p.m. to 9 p.m. on Friday and from 8:30 a.m. to 4 p.m. on Saturday.

Place: State Plaza Hotel, 2117 E Street, NW., Ambassador Room Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Andrew R. Molnar, Program Director, Applications for Advanced Technologies, room 635, Washington, DC 20550, Phone (202) 357-7064.

Purpose of Meeting: To provide advice and recommendations concerning support for research.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Dated: June 11, 1991.

M. Rebecca Winkler,
 Committee Management Officer.

[FR Doc. 91-14283 Filed 6-14-91; 8:45 am]

BILLING CODE 7555-01

NUCLEAR REGULATORY COMMISSION

Application for License to Export a Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export a utilization facility as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of appl., date received, application no.	Description	Value	End use	Country of destination
Mitsui & Co., Inc., 05/29/91, 05/30/91, XR159.	6 Reactor Control Rods.....	\$198,000	For installation in Fukushima I, Unit No. 2 nuclear power reactor.	Japan.

Dated this 7th day of June 1991, at
 Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Assistant Director for Exports, Security, and Safety Cooperation International Programs
 Office of Governmental and Public Affairs.

[FR Doc. 91-14337 Filed 6-14-91; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standard 412, Cost Accounting Standard for Composition and Measurement of Pension Cost

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments concerning a Staff Discussion Paper on the topic of accounting for unfunded pension costs.

DATES: Requests for copies of the Staff Discussion Paper should be received by August 16, 1991.

ADDRESSES: Requests for a copy of the staff discussion paper or comments upon its contents should be addressed to Mr. Robert Lynch, Project Director, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Attn: CASB Docket No. 91-03.

FOR FURTHER INFORMATION CONTACT: Robert Lynch, Project Director, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is releasing a Staff Discussion Paper of a proposed revision to Cost Accounting Standard 412 with respect to the measurement and assignment of the costs of unfunded pension plans to Government contracts. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised Cost Accounting Standard, consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard. The purpose of the Staff Discussion Paper is to solicit public views with respect to the Board's consideration of the topic of accounting for unfunded pension plans. The Staff Discussion Paper has not been formally approved by the Board. It reflects research accomplished to date by the staff in the respective subject areas.

Dated: May 28, 1991.

Allan V. Burman,

Administrator for Federal Procurement Policy and Chairman, Cost Accounting Standards Board.

[FR Doc. 91-13004 Filed 6-14-91; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-18186; 811-3419]

National Cash Reserves, Inc.; Application for Deregistration

June 7, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: National Cash Reserves, Inc. ("NCR").

RELEVANT 1940 ACT SECTIONS: Section 8(f) and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks and order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on March 28, 1991 and amended on May 22, 1991.

HEARING OR NOTIFICATION OF HEARING:

An order granting the application will be issued unless the SEC orders as hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by

mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 1, 1991, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Lisa Hurley, National Securities & Research Corporation, Two Pickwick Plaza, Greenwich, CT 06830.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. NCR is a diversified open-end management company incorporated under the laws of Maryland. On March 16, 1982, NCR registered under the Act. On this same date, NCR filed a registration statement registering an indefinite number of shares. The registration statement became effective on April 27, 1982, and the initial public offering commenced immediately thereafter.

2. On September 13, 1990 the Board of Director of NCR approved an Agreement and Plan of Reorganization (the "Plan") under which all of the assets and liabilities of NCR would be transferred to the Prime Cash Series Portfolio (the "Portfolio") of the Cash Trust Series, a registered investment company (File No. 811-5843).

3. On January 18, 1991 NCR held a special meeting of shareholders (the "Special Meeting") to vote on the Plan. A majority of NCR's shareholders approved the Plan. Proxy materials relating to the Plan were mailed to shareholders on or about December 12, 1990 and filed with the SEC on or about December 17, 1990.

4. Pursuant to the Plan, on January 25, 1991, (the "Closing Date") NCR transferred to the Portfolio all of its assets. In return the Portfolio assumed all of the obligations and liabilities of NCR and delivered to NCR a number of full and fractional shares of beneficial interest of the Portfolio having an aggregate net asset value equal to the

aggregate net asset value of the assets of NCR. NCR distributed the Portfolio shares received by it to its shareholders pro rata in complete liquidation of NCR.

5. As of December 6, 1990 (the record date for determined of shareholders entitled to vote at the Special Meeting), NCR had 43,361,600 shares outstanding, with an aggregate net asset value of \$43,361,600 and a per share net asset value of \$1.00.

6. Federated Advisers, the investment adviser for the Portfolio, assumed all the costs of the reorganization.

7. At the time of filing of the application, NCR had not shareholders, assets or liabilities. All of NCR's required N-SAR filings have been made. NCR is not a party to any litigation or administrative proceedings. NCR is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14251 Filed 6-14-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25329]

Filings Under the Public Utility Holding Company Act of 1935

June 7, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 1, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing.

if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70-7787)

Northeast Utilities ("Northeast"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090-0010, a registered holding company, its service company subsidiary, Northeast Utilities Service Company ("NUSCO"), 107 Selden Street, Berlin, Connecticut 06037-0218, and its electric public-utility subsidiaries, Yankee Atomic Electric Company ("YAEC"), 580 Main Street, Bolton, Massachusetts 01740, and Connecticut Light & Power Company, 107 Selden Street, Berlin, Connecticut 06037-0218 (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 13(b) and 13(f) of the Act and rules 45, 86 through 91, and 93 through 95 thereunder.

Northeast proposes to form and capitalize North Atlantic Energy Service Corporation ("NAESCO"), as a new, wholly owned electric utility company and service company subsidiary that will assume operating responsibility for the Seabrook Nuclear Power Plant ("Seabrook") on behalf of Seabrook's joint owners ("Joint Owners"), including CL&P.¹ NAESCO proposes to issue and sell, and Northeast proposes to acquire, up to 1,000 shares of NAESCO's authorized but unissued common stock, \$1.00 par value per share, for an aggregated purchase price of \$10,000.

NAESCO, acting as agent of the Joint Owners, will assume from PSNH its rights and obligations under various contracts entered into on behalf of the Joint Owners with respect to the management, operation and maintenance of Seabrook. NAESCO will provide such services to the Joint Owners under a Managing Agent Operating Agreement ("Managing Agent Agreement"), a Disbursing Agent Agreement ("Disbursing Agreement") and a presently existing Agreement for Joint Ownership, Construction and

Operation of New Hampshire Nuclear Units ("Owners Agreement"). The principal terms of the Managing Agent Agreement and the Disbursing Agreement and certain proposed modifications to the present Owners Agreement are contained in a July 19, 1990 agreement ("July Agreement") among NUSCO, acting on behalf of NAESCO, and certain other Joint Owners, including CL&P and PSNH. The July Agreement grants NAESCO the authority to assume responsibility for operating Unit 1 and for supervising the disposition of Unit 2, once all necessary regulatory approvals are obtained, regardless of whether Northeast acquires PSNH.

Under the Disbursing Agreement, NAESCO will assume the duties performed by YAEC as disbursing agent for Seabrook, including maintaining an escrow account(s) for funds paid by the Joint Owners to NAESCO for its Seabrook expenses.

The July Agreement and the Managing Agent Agreement also give NAESCO the authority to appoint or retain a service company or agent with which it is affiliated to perform certain of its responsibilities under the Managing Agent Agreement and Owners Agreement, subject to the approval of at least three nonaffiliated Joint Owners with an aggregate ownership interest in Seabrook of at least sixty percent. NAESCO intends to enter into service contracts with: (1) NUSCO for certain administrative, general and technical services; (2) YAEC for engineering and technical functions it now provides under an existing contract with PSNH; and (3) PSNH, if and to the extent requested by NAESCO, for an initial term of up to two years, with certain limited services including accounting, computer, transmission and maintenance services, all such services to be performed at cost by NUSCO, YAEC and PSNH. Under the YAEC service contract, the Joint Owners, including CL&P, will be required to enter into certain indemnification agreements under the YAEC service contract.

The Applicants request authority to consummate the proposed transactions within one year from the date of the Commission's order approving such transactions.

The Columbia Gas System, Inc. (70-7854)

The Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and Columbia Gas Development Corporation ("Development"), 777 South Post Oak

Lane, suite 101, Houston, Texas 77057 Columbia Natural Resources, Inc. ("Resources"), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, Columbia Gas Development of Canada, Ltd. ("Columbia Canada"), 1000 Standard Life Building, 639 Fifth Avenue SW., Calgary, Alberta, Canada T2P 0M9 (collectively, "Production Subsidiaries"), each a wholly-owned nonutility subsidiary company of Columbia, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 50(a)(5) thereunder.

Columbia proposes to create a new subsidiary holding company ("Newco") through a tax-free exchange ("Exchange") of: (1) All the common stock of the Production Subsidiaries, then \$10 par value per share,² owned by Columbia for up to 50 million shares of Newco common stock, \$5 par value per share; and (2) installment promissory notes evidencing all the debt of Development and Resources owed to Columbia as of the date of the Exchange for up to \$500 million of Newco installment promissory notes ("Notes"). The Notes will be unsecured, will be dated on the issuance date, will carry a thirty-year term, and will have similar provisions as the notes authorized to be issued by the Production Subsidiaries to Columbia by order dated on December 18, 1989 (HCAR No. 25001) (the "December 1989 Order"). The interest rate on the Notes will approximate the effective cost of money to Columbia with respect to its most recent issuance of long-term debt (currently 9.92%).

Columbia proposes to finance Newco through an initial public offering ("IPO") of approximately 20%, but in no event more than 11 million additional shares of Newco common stock outstanding after the IPO. The approximately \$200 million in proceeds anticipated from the IPO will be used by Newco to finance the business of the Production Subsidiaries. Columbia requests that Newco's sale of up to 11 million additional shares of common stock to the public be excepted from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5) thereunder.

The Production Subsidiaries were granted authority by the December 1989 Order to issue common stock and debt aggregating \$248,275,000 in proceeds prior to December 31, 1991. Columbia proposes that Newco be authorized to acquire all the common stock and notes

¹ Seabrook, a two unit nuclear facility ("Unit 1" and "Unit 2"), is operated by Public Service Company of New Hampshire ("PSNH"), a 35.6% Joint Owner of Seabrook. Northeast was authorized, in relevant part, to acquire PSNH, including its Seabrook interest. HCAR Nos. 25221 and 25273 (Dec. 21, 1990 and Mar. 15, 1991, respectively). NAESCO will assume operating responsibility for Seabrook from PSNH but will not own Seabrook or be entitled to its capacity or energy. NAESCO's only associate company customers will be North Atlantic Energy Corporation, a to-be-formed electric utility subsidiary of Northeast that will own PSNH's Seabrook interest, and CL&P, an approximately 4% owner of Seabrook.

² Columbia states that, prior to the reorganization, it intends to recapitalize the Production Subsidiaries by reducing the par value of their authorized common stock from \$25 to \$10 per share.

issued by the Production Subsidiaries to Columbia as of the date of the Exchange and, to the extent authorization under the December 1989 Order remains unused, after the date of the Exchange but prior to December 31, 1991.

Additionally, to the extent that the IPO proceeds are insufficient to fund the needs of the Production Subsidiaries, Columbia proposes to provide additional funds to Newco to fund the post-Exchange needs of the Production Subsidiaries through December 31, 1991, in an amount not to exceed the current debt authorized to be issued by the Production Subsidiaries to Columbia by the December 1989 Order. Such borrowings will be evidenced by the issuance of notes by Newco to Columbia.

The Production Subsidiaries are currently authorized to issue notes prior to December 31, 1991 which, if issued, will bring total notes issued to approximately \$344 million. The authorization for Newco to issue up to \$500 million of debt in exchange for the Production Subsidiaries' debt assumes that the Production Subsidiaries will apply for, and be granted, further authorization to issue additional debt prior to June 30, 1993 in excess of the approximately \$344 million currently authorized. The debt to be issued by Newco in exchange for Production Subsidiary debt will not exceed the outstanding debt of the Production Subsidiaries, as previously authorized or to be authorized by the Commission.

Columbia will derive funds necessary to purchase Newco common stock and notes through the issuance of medium-term notes, debentures and commercial paper, and through short-term borrowings or subordinated borrowings under various credit agreements, as previously authorized by the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 91-14252 Filed 6-14-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1413]

Shipping Coordinating Committee, Subcommittee on Safety of Navigation; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, July 3, 1991, in room 8334 at Department of

Transportation Headquarters, 400 Seventh Street, SW., Washington, DC.

The purpose of the meeting is to prepare for the 37th session of the Subcommittee on Safety of Navigation of the International Maritime Organization (IMO) which is scheduled for September 23-27, 1991, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

- Decisions of other IMO bodies.
- Routing of ships.
- Review of rules 23, 25, 26, and annex IV of the 1972 Collision Regulations.
- Navigational aids and related equipment:
 1. World-wide navigation system.
 2. Electronic chart display systems.
 3. Guidelines on the use of transponders on ships for safety purposes.
 4. Optimal methods of automatic radar plotting aids (ARPA) and radar display presentation.
 5. International Telecommunications Union (ITU) matters, including International Radio Consultative Committee (CCIR) Study Group 8.
- Matters relating to fishing vessels:
 1. Amendments to chapter X of the 1977 Torremolinos International Convention.
 2. Fishing vessel watchkeeping requirements.
 3. Marking of fishing gear.
- International Code of Signals.
- Officer of the navigational watch acting as the sole lookout in periods of darkness.
- Review of World Meteorological Organization (WMO) handbooks on navigation in areas of sea-ice.
- Revision of chapters 8 and 13 of the Code of Safety for Dynamically Supported Craft.
- Guidelines on the recruitment, qualifications, and training of vessel traffic service (VTS) operators.
- Review of resolution A.578(14).
- Bridge procedures.
- Work program.
- Election of Chairman and Vice-Chairman for 1992.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G-NSR-3), room 1416, 2100 Second Street SW., Washington, DC 20593-0001 or by calling (202) 267-0416.

Dated: June 6, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-14309 Filed 6-14-91; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice 1414]

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open public meeting at 9:30 a.m. on Wednesday, July 24, 1991, in room 2415 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to report on the results of the 64th Session of the International Maritime Organization (IMO) Legal Committee conducted March 18-22, 1991, as well as to solicit public comment for the upcoming 65th Session scheduled to be held from September 30 until October 4, 1991.

The principal focus of the SHC public meeting will be to discuss the ongoing Legal Committee deliberations concerning the question of liability and compensation related to the maritime carriage of hazardous and noxious substances (HNS).

The views of the public, and particularly those of affected maritime commercial and environmental interests, are requested.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be addressed at the SHC meeting, contact either Captain Jonathan Collom or Lieutenant Mark J. Yost, U.S. Coast Guard (G-LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4163.

Dated: June 7, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91-14308 Filed 6-14-91; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on July 31, 1991, at 9 a.m.

ADDRESSES: The meeting will be held in room 8 ABC, 8th floor, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Ms. Meg Mack, Office of Flight Standards Service (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier Operations Subcommittee to be held on July 31, 1991, at the FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for this meeting will include progress reports from the Noise Abatement Takeoff Profile Working Group, Fuel Requirements Working Group, Wet Leasing Working Group, and Autopilot Engagement Requirements Working Group. Each Working Group Chair will report on the organization and composition of the working group, proposed scope, products, milestones, and progress thus far.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on June 10, 1991.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-14304 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

Training and Qualifications Subcommittee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Training and Qualifications Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on June 27, 1991, at 9 a.m.

ADDRESSES: The meeting will be held in the MacCracken Room, 10th Floor, 800 Independence SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Mrs. Etta Schelm, Office of Flight Standards Service (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Training and Qualifications Subcommittee to be held on June 27, 1991, at the FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591. The agenda for this meeting will include progress reports from the Pilot Training Working Group, Air Carrier Working Group, General Aviation Working Group, Ab Initio Working Group, and Cabin Safety and Operations Working Group.

Attendance is open to the interested public but may be limited to the space available. The Public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Issued in Washington, DC, on June 4, 1991.

David R. Harrington,

Executive Director, Training and Qualifications Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 91-14305 Filed 6-14-91; 8:45 am]

BILLING CODE 4910-13-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 116

Monday, June 17, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Office of the Inspector General
Oversight Committee

TIME AND DATE: A meeting of the Board of Directors Office of the Inspector General Oversight Committee will be held on June 24, 1991. The meeting will commence at 12:00 p.m.

PLACE: The Marriott Suites Hotel, 801 North St. Asaph Street, The Conference Room, Alexandria, VA 22314, (703) 836-4700.

STATUS OF MEETING: Open [A portion of the meeting may be closed, subject to a vote by a majority of the Board of Directors, to discuss personnel-related and personal matters as authorized by the relevant portions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (2) and (6)], and the corresponding regulations of the Legal Services Corporation [45 C.F.R. Sections 1622.5 (a) and (e)]. A portion of the meeting may be closed to preserve the applicants' personal privacy and to discuss strictly internal personnel rules

and practices. Specifically, the Committee will consider responses to questions posed to selected applicants being considered for the position of Inspector General of the Legal Services Corporation.]

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of June 3, 1991 Meeting.
3. Consideration of Responses to Questionnaires Submitted by Applicants for the Position of Inspector General of the Legal Services Corporation.

CONTACT PERSON FOR INFORMATION:

Patricia D. Batie, Executive Office, (202) 863-1839.

Date issued: June 13, 1991.

Patricia D. Batie,

Corporate Secretary.

AGDAOIG.62491/

[FR Doc. 91-14478 Filed 6-13-91; 1:50 p.m.]

BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: A meeting of the Board of Directors Audit and Appropriations

Committee will be held on June 25, 1991. The meeting will commence at 9:30 a.m.

PLACE: The Marriott Suites Hotel, 801 North St. Asaph Street, Salon III, Alexandria, VA 22314, (703) 836-4700.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Approval of Minutes of March 24, 1991.
3. Status Report on Selection of Independent Auditor to Conduct Corporation's Fiscal Year (FY) 1991 Annual Audit.
4. Consideration of Mid-Year Budget Modifications.
5. Review of Budget and Expenses through April 1991.
6. Consideration of FY 1993 Program Funding Levels.
7. Status Report on Management's Assessment of Corporation Space Needs

CONTACT PERSON FOR INFORMATION:

Patricia D. Batie, Executive Office, (202) 863-1839.

Date Issued: June 13, 1991.

Patricia D. Batie,

Corporate Secretary.

AGDA62591/

[FR Doc. 91-14479 Filed 6-13-91; 1:50 p.m.]

BILLING CODE 7050-01-M

Corrections

Federal Register

Vol. 56, No. 116

Monday, June 17, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 901246-1100]

RIN 06448-AC88

Northeast Multispecies Fishery

Correction

In rule document 91-12894 beginning on page 24724 in the issue of Friday, May 31, 1991, make the following corrections:

1. On page 24725, in the second column, in the sixth paragraph, in the third line, "inconsistent" should read "consistent".

2. On page 24726, in the third column, in the second full paragraph, in the third line, "the" should read "The".

§ 651.21 [Corrected]

3. On page 24728, in the third column, in § 651.21(b)(1)(ii), in the sixth line, "close" should read "closure".

§ 651.27 [Corrected]

4. On page 24749, in the second column, in § 651.27(a)(2), in the third line, "form" should read "from".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Technical Information Service

Government-owned Inventions; Availability for Licensing

Correction

In notice document 91-8867 beginning on page 15333, in the issue of Tuesday, April 16, 1991 make the following corrections:

1. On the same page, in the third column, in the first paragraph, in the fourth line, after "United States" insert

the following "Government and is available for licensing in the United States".

2. On the same page, in the same column, remove the entire fourth paragraph, beginning with "Licensing is available for licensing to * * *".

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement—Library Programs; Invitation To Apply for New Awards for Fiscal Year 1992

Correction

In notice document 91-13909 beginning on page 27156 in the issue of Wednesday, June 12, 1991, make the following corrections:

1. On the cover preceding page 27156, the subject matter should read as follows:

Office of Educational Research and Improvement—Library Programs; Invitation To Apply for New Awards; Notice

2. On page 27158, in the third column, the FR Doc. line should read as follows:

[FR Doc. 91-13909 Filed 6-11-91; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-435-000, et al.]

D C Tie Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 91-12059 beginning on page 23558, in the issue of Wednesday, May 22, 1991, make the following correction:

On page 23559, in the first column, the Docket No. for **PacifiCorp Electric Operations** should read "ER91-329-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91-156-000]

Northern Natural Gas Co.; Temporary Waiver of Tariff Provision

Correction

In notice document 91-12853 appearing on page 24801, in the issue of Friday, May 31, 1991, in the first column, the docket number heading should read as shown above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10818-000]

Greenbrier Electro-motive, Inc.; Availability of Environmental Assessment

Correction

In notice document 91-12060 appearing on page 23562, in the issue of Wednesday, May 22, 1991, the Project No. should read as shown above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 630

[Docket No. 86N-0027]

Additional Standards for Viral Vaccines; Poliovirus Vaccine Live Oral

Correction

In rule document 91-10929 beginning on page 21418 in the issue of Wednesday, May 8, 1991, make the following corrections:

1. On page 21421, in the first column, in the eighth line from the bottom, "extension" should read "extensive".

2. On same page, in the third column, in sixth line, "§ 630.1198(d)" should read "§ 630.19(d)".

3. On page 21427, in the first column, in the seventh line from the bottom, "monoalen" should read "monovalent".

4. On page 21430, in the third column, in the seventh line from the bottom, after "neurovirulence" insert "and identity".

5. On page 21431, in first column, in the tenth line, "pods" should read "pools".

6. On same page, in the same column, in paragraph 33, in the fifth line, "manufacture" should read "manufacturer".

§ 630.12 [Corrected]

7. On page 21433, in the second column, in § 630.12(a)(3), in the second line "for" should read "from".

§ 630.18 [Corrected]

8. On page 21436, in the third column, in § 630.18(a)(3), in the eighth line from the bottom, "14 days" should read "14-day test".

§ 630.18 [Corrected]

9. On page 21437, in the first column, in § 630.18(a)(5), in the sixth line from the bottom, "14 years" should read "14 days".

BILLING CODE 1505-01-D

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement: Pulp and Paper Facility Proposed by Mead Corporation on the Tennessee River

Correction

In notice document 91-11114 beginning on page 21704, in the issue of Friday, May 10, 1991 make the following corrections:

On page 21705, in the 1st column, in the 3d full paragraph, in the 10th line, and in the 5th paragraph, in the 3d, 11th, 14th, and 16th lines "USAGE" should read "USACE".

BILLING CODE 1505-01-D

THE STATE OF TEXAS, COUNTY OF DALLAS.

Know all men by these presents, that I, the undersigned, for and in behalf of the said County of Dallas, do hereby certify that the within and foregoing is a true and correct copy of the original thereof, as the same appears from the records of the County of Dallas, Texas.

Witness my hand and seal of office, this 11th day of January, 1901.

JOHN W. BROWN, County Clerk.

Attest my hand and seal of office, this 11th day of January, 1901.

JOHN W. BROWN, County Clerk.

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JOHN W. BROWN, County Clerk.

Federal Register

Monday
June 17, 1991

Part II

Uniform Rules of Practice; Notice of Proposed Rulemaking

Department of the Treasury
Office of the Comptroller of the Currency
Office of Thrift Supervision
Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration

DEPARTMENT OF THE TREASURY**Office of the Comptroller of the Currency****12 CFR Part 19**

[Docket No. 91-4]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**12 CFR Part 263**

[Docket No. R-0733]

RIN 7100-AB23

FEDERAL DEPOSIT INSURANCE CORPORATION**12 CFR Part 308**

RIN 3064-AA64

DEPARTMENT OF THE TREASURY**Office of Thrift Supervision****12 CFR Parts 508, 509, 512, and 513**

[Docket No. 91-333]

RIN 1550-AA35

NATIONAL CREDIT UNION ADMINISTRATION**12 CFR Part 747**

[Docket No. 91-06-C]

Uniform Rules of Practice and Procedure

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires that the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Board of Governors"), Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), and National Credit Union Administration ("NCUA") develop a set of uniform rules and procedures for administrative hearings ("Uniform Rules"). Section 916 further requires that the agencies promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

This proposal is intended to make uniform those rules that pertain to the types of formal enforcement actions common to at least four of the listed agencies. In addition to these Uniform Rules, each agency proposes complementary "Local Rules" to address some or all of the following: formal enforcement actions not addressed in the Uniform Rules, informal actions which are not subject to the Administrative Procedure Act ("APA"), and procedures to supplement or facilitate the processing of administrative enforcement actions within each agency.

DATES: Comments on this joint proposed rule must be received by July 17, 1991.

ADDRESSES: Comments should be directed to:

OCC: Communications Division, 250 E Street SW., Washington, DC 20219, attention: Docket No. 91-4. Comments will be available for public inspection and photocopying at the same location.

Board of Governors: Mr. William Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551, attention: Docket No. R-0733 or delivered to room B-2223, Eccles Building, between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FDIC: Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand delivered to room F-402, 1776 F Street NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in room F-402 between 8:30 a.m. and 5 p.m. on business days. [FAX number (202) 698-3838]

OTS: Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, attention: Docket No. 91-333. Comments will be available for inspection at 1735 I Street NW. 9th floor.

NCUA: Send comments to Becky Baker, Secretary, NCUA Board, 1776 G Street NW., Washington, DC 20456. Comments will be available for inspection at the same location.

FOR FURTHER INFORMATION CONTACT:

OCC: Barrett Aldemeyer, Senior Attorney, or Lee Walzer, Attorney, Legislative and Regulatory Analysis Division (202/874-5090), or Daniel Stipano, Assistant Director,

Enforcement and Compliance Division (202/874-4800).

Board of Governors: Douglas Jordan, Senior Attorney, Legal Division (202/452-3787), or Ann Marie Kohlrigian, Senior Counsel, Division of Banking Supervision and Regulation (202/452-3528). For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson (202/452-3544).

FDIC: Nancy Alper, Counsel, Compliance and Enforcement Section (202/898-3720) or Andrea Winkler, Counsel, Compliance and Enforcement Section (202/898-3764).

OTS: Dawn Causey, Attorney, Division of Enforcement (202/906-7157).

NCUA: Steven Wideman or Mary Rupp, Attorneys, Office of General Counsel (202/682-9630).

SUPPLEMENTARY INFORMATION:**A. Background**

Section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183 (1989), requires that the OCC, Board of Governors, FDIC, OTS, and NCUA develop a set of uniform rules and procedures for administrative hearings. In addition, FIRREA requires the agencies to promulgate provisions for summary judgment rulings where there are no disputes as to the material facts of a case.

By including this provision in FIRREA, Congress intended that the listed agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987 recommendation that "(g)iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

B. Uniform Rules

As set forth below, there shall be at least two subparts to each listed agency's new rules of practice and procedure. The first subpart, designated "Uniform Rules," will set forth the uniform rules of practice and procedure for those formal enforcement actions which are required by statute to be

determined on the record after an opportunity for an agency hearing and which are common to at least four of the agencies. Those enforcement actions include cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b)) and section 206(e) of the Federal Credit Union Act ("FCUA") (12 U.S.C. 1786(e)); removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e)) and section 206(g) of the FCUA (12 U.S.C. 1786(g)); change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)); proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o-5); the assessment of civil money penalties, pursuant to various statutes, as cited in the Uniform Rules, for (1) violations of law or regulation; (2) violation of any final order or temporary order issued pursuant to section 8 of the FDIA (12 U.S.C. 1818(b)), or sections 202 and 206 of the FCUA (12 U.S.C. 1782 and 1786); (3) violation of any conditions imposed in writing by the appropriate Federal banking agency in connection with the grant of any application or other request by a regulated institution; (4) violations of any written agreement between such a regulated institution and such agency; (5) violations related to the failure to submit and publish accurate and complete regulatory reports; and (6) certain unsafe and unsound practices and breaches of fiduciary duty. The Uniform Rules will also apply to any other formal adjudications not specifically set forth in the Uniform Rules that are required by statute to be determined on the record after an opportunity for an agency hearing and are common to at least four of the five agencies.

C. Local Rules

The remainder of the proposed rules, designated "Local Rules," will be divided into five sections, one for each of the agencies. In these sections each agency will set forth its own rules to address some or all of the following topics: formal enforcement actions common to fewer than four of the five agencies, informal actions which are not subject to the APA, and procedures to supplement or facilitate the processing of administrative enforcement actions within each agency. The Local Rules will address the following proceedings:

OCC Proceedings. Removal, suspension, and prohibition proceedings under section 8(g) of the FDIA (12 U.S.C. 1818(g)); exemption hearings under sections 12 (h) and (i) of the Exchange Act (15 U.S.C. 78j (h) and (i)); disciplinary proceedings under sections

15B(c)(5), 15C(c)(2)(A), 17A(c)(3), and 17A(c)(4)(C) of the Exchange Act (15 U.S.C. 78o-4(c)(5), 78o-5(c)(2)(A), 78q-1(c)(3)(A), and 78q-1(c)(4)(C)); civil money penalty proceedings under section 21B of the Exchange Act (15 U.S.C. 78u-2) in proceedings under sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o-4, 78o-5, and 78q-1); cease-and-desist proceedings under sections 12(i) and 21C of the Exchange Act (15 U.S.C. 78j(i) and 78u-3); and proceedings for the review of agency disapprovals in change-in-control proceedings under section 7(j) of the FDIA (12 U.S.C. 1817(j)).

Board of Governors Proceedings.

Suspension of a member bank from use of Federal Reserve credit facilities under section 4 of the Federal Reserve Act ("FRA") (12 U.S.C. 301); termination of a bank's membership in the Federal Reserve System under section 9 of the FRA (12 U.S.C. 327); issuance of a cease and desist order under section 11 of the Clayton Act (15 U.S.C. 21); formal adjudication of bank merger applications under section 18(c) of the FDIA (12 U.S.C. 1828(c)); issuance of a divestiture order under section 5(e) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(e)); disciplinary proceedings under section 15B(c)(5) of the Exchange Act (15 U.S.C. 78o-4); procedures relating to the imposition of civil money penalties under specified statutes; procedures relating to the suspension, removal or prohibition of institution-affiliated parties under section 8(g) of the FDIA (12 U.S.C. 1818(g)); procedures for issuance and enforcement of capital directives under the International Lending Supervision Act of 1983; procedures for censure, suspension or debarment of practitioners before the Board of Governors; and procedures for actions under the Equal Access to Justice Act (5 U.S.C. 504).

FDIC Proceedings. Change in Bank Control proceedings under section 7(j) of the FDIA (12 U.S.C. 1817(j)); involuntary termination of insurance proceedings under section 8(a) of the FDIA (12 U.S.C. 1818(a)); proceedings relating to cease-and-desist orders under section 8(b) of the FDIA (12 U.S.C. 1818(b)); proceedings relating to the assessment of civil money penalties pursuant to sections 7(a), 8(i) and 18(j) of the FDIA (12 U.S.C. 1817(a), 1818(i) and 1828(j)); proceedings regarding sanctions against municipal securities dealers or persons associated with them and clearing agencies or transfer agents under section 15(b)(4), 17, or 17A of the Exchange Act (15 U.S.C. 78o, 78q and 78q-1); exemption hearings under

section 12(h) of the Exchange Act (12 U.S.C. 78j(h)); investigations pursuant to section 10(c) of the FDIA (12 U.S.C. 1820(c)); proceedings relating to change in senior executive officers or directors under section 32 of the FDIA (12 U.S.C. 1831i); proceedings relating to unauthorized participation by convicted individuals under section 19 of the FDIA (12 U.S.C. 1829); proceedings relating to the assessment of liability against commonly-controlled depository institutions under section 5(e) of the FDIA (12 U.S.C. 1815(e)); proceedings relating to the recovery of fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504.

OTS Proceedings. The OTS Local Rules augment the Uniform Rules by expanding the scope of the Uniform Rules to apply to particular savings and loan holding company and securities proceedings, adding deposition discovery, clarifying the time and method for filing motions before the Director, and civil money penalties. OTS's non-APA proceedings are not contained in its part 509. The non-APA proceedings may be found at part 508 (removals, suspensions, and prohibitions where a crime is charged or proven), part 512 (investigations), and part 513 (disciplinary proceedings).

NCUA Proceedings. The new subpart A replaces the existing subparts A [Rules of Practice and Procedure], C [Cease-and-desist Actions], D [Assessment of Civil Penalties] and E [Removal, Prohibition and Suspension Actions]. A new subpart B is reserved for local rules of practice and procedure, unique to the NCUA, which may be developed in the future. The existing subparts B, F, G, H, I, J, K and L remain unchanged in substance. To conform to the elimination of existing subparts C, D and E, however, these remaining subparts are redesignated subparts C, D, E, F, G, H, I and J, respectively, and the sections of each are renumbered sequentially. The new subparts B through J shall be known as the NCUA's Local Rules.

The Uniform Rules, as set forth in the subpart A, supplement the Local Rules and procedures set forth individually in new subparts C, E, F and G. (New subparts D, H, I and J concern proceedings which either are informal or non-adjudicative, and to which the Uniform Rules do not apply.) However, each of subparts C, E, F and G provides that its own provisions shall control in the event of an inconsistency with those of subpart A.

D. Section-by-Section Summary and Discussion of Uniform Rules

Section _____ 1 Scope.

As a result of the statutory mandate contained in Section 916 of FIRREA, the Agencies are proposing a set of administrative hearing procedures that cover those proceedings that at least four of the five Agencies share in common and that require a formal hearing before an administrative law judge. These common proceedings include cease-and-desist actions, removal and prohibition actions and the assessment of civil money penalties. In addition, four of the five agencies share regulatory authority over the adjudication of change-in-control applications (12 U.S.C. 1817(j)(4)) and hearings to impose sanctions on government securities brokers and dealers (15 U.S.C. 78o-5). Proceedings such as the termination of insurance are common only to the FDIC and the NCUA, and as a consequence, are not included in this proposal. Procedures for such non-common proceedings may be found in the Local Rules of the particular Agency.

Section _____ 2 Rules of construction.

This section makes clear that the use of any term in the Uniform Rules includes either its singular or plural form, as appropriate, and that the use of the masculine, feminine or neuter gender shall, if appropriate, be read to encompass all three. Because the Uniform Rules allow for non-attorney representation under certain circumstances, the Rules of Construction indicate that the term "counsel" includes non-attorney representatives. Finally, this section explicitly states that, unless otherwise indicated, any action required to be taken by a party to a proceeding may be taken by the party's counsel.

Section _____ 3 Definitions.

This section sets forth definitions of the terms that will be common to the procedures used by the OCC, Board of Governors, FDIC, OTS, and NCUA. Definitions which do not pertain to procedures regarding formal enforcement actions common to at least four of these agencies, but which pertain instead to a particular agency's actions or procedures which are not covered by these Uniform Rules, are contained in that agency's Local Rules. The definitions contained in this section apply to the use of any such term in the Uniform and Local Rules, unless otherwise explicitly stated to the contrary.

An "administrative law judge" is defined in paragraph (a) as the one who presides at an administrative hearing, and who has the powers enumerated in the APA. The term "Office of Financial Institution Adjudication (OFIA)" means the executive body charged with overseeing the administration of administrative enforcement proceedings. These definitions reflect the mandate of FIRREA that the agencies establish a common pool of administrative law judges for their enforcement proceedings. OFIA is the executive body established to oversee the administration of such proceedings.

The definition of "adjudicatory proceeding" in paragraph (b) indicates that the rules apply only to formal administrative proceedings subject to the APA which result in a final order, and do not include rulemaking procedures.

"Final order" is defined in paragraph (g) to mean an order issued by an Agency with or without the consent of the affected institution or institution-affiliated party, that has become final. The finality of such an order is not affected by the pendency of any petition for reconsideration or review.

The definition of "Agency" in paragraph (c) sets forth the institutions over which the OCC, Board of Governors, FDIC, OTS, and NCUA have supervisory authority. The definition of "Agency Head" indicates the body or the individual that is the decision maker within each Agency.

The term "institution" includes any organization subject to the jurisdiction of the five agencies—banks, bank and savings association holding companies, nonbank subsidiaries of holding companies, Federal credit unions, insured state credit unions, savings associations, Edge Act companies, and branches and agencies of foreign banks.

The term "decisional employee" denotes those members of the Agency's or administrative law judge's staff who have not engaged in an investigative or prosecutorial role in an adjudicatory proceeding, and who may play a role in the proceeding's decisionmaking process. "Enforcement Counsel" are defined as individuals who file a notice of appearance as counsel on behalf of the Agency in an adjudicatory proceeding.

The term "person" is intended to be construed broadly, and encompasses an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (h). A "party" includes the

Agency and any person named in the notice which commences a proceeding. "Institution-affiliated party" incorporates the definition of that term found in both the FDIA and the FCUA. A "respondent" is a party other than the Agency.

The term "violation", defined in paragraph (n), means any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

Section _____ 4 Authority of Agency Head.

This section makes clear that the Agency Head may, at any time during a proceeding, perform, direct the performance of, or waive performance of, any act which may be done or ordered by the administrative law judge.

Section _____ 5 Authority of administrative law judge.

This section enumerates powers granted to the administrative law judge subsequent to appointment. The list is not exhaustive. The administrative law judge is permitted to take any other action necessary and appropriate to discharge the duties of a presiding officer. All powers granted by this provision are intended to further the Agency's goal of an expeditious, fair, and impartial hearing process.

Section _____ 6 Appearance and practice in adjudicatory proceedings.

This section sets forth the criteria for persons acting in a representative capacity for parties in an adjudicatory proceeding. A notice of appearance is required to be filed by an individual representing any party, including an individual representing the Agency, simultaneously with or before the submission of papers or other act of representation on behalf of a party. Any counsel filing a notice of appearance is deemed to represent that he or she agrees and is authorized to accept service on behalf of the represented party.

Section _____ 7 Good faith certification.

This section requires that all filings or submissions be signed by at least one counsel of record or the party, if appearing on his or her own behalf. This section provides that, by signing a filing or submission, the counsel or party certifies and attests that the document has been read by the signer and, to the best of his or her knowledge, is well grounded in fact and is supported by existing law or a good faith argument for

the extension or modification of the existing law. In addition, the certification attests that the filing or submission is not for purposes of unnecessary delay or any improper purpose. If the document is not signed, an opportunity to sign will be granted; however, if after such opportunity the document is still not signed, the administrative law judge is required to strike it from the record of the proceeding. Oral motions or arguments are also subject to the good faith certification: the act of making the oral motion or argument constitutes the required certification.

Section _____ 8 Conflicts of interest.

In general, conflicts of interest in representing parties to adjudicatory proceedings are prohibited by the Uniform Rules. The administrative law judge is empowered to take corrective steps to eliminate such conflicts. If counsel represents more than one party to a proceeding, counsel is required to file at the time he or she files his or her notice of appearance a certification that: (1) The potential for possible conflicts of interest has been fully discussed with each such party; (2) the parties are aware of no existing or anticipated material conflict between their interests individually; and, (3) the parties individually waive any right to assert the conflicts of interest during the proceeding. This outlined approach follows the Model Code of Conduct for attorneys and the District of Columbia Ethics Rule.

Section _____ 9 Ex parte communications.

This section adopts the rules and procedures set forth in the APA regarding ex parte communications. See 5 U.S.C. 551(14) and 557(d). Generally, any communications without notice to all other parties between parties or interested persons and those involved in the decisionmaking process is prohibited. This includes communications from a party, counsel for the party, or an interested person to the administrative law judge, the Agency Head, or a decisional employee assisting the administrative law judge or Agency Head. Similarly, administrative law judges, Agency Heads and their decisional employees are prohibited from making ex parte communications to a party, counsel for a party, or an interested person. Communications regarding the status of the proceeding are expressly excluded from the definition of ex parte communications.

If an ex parte communication does occur, the document itself, or if oral, a memorandum of the substance of the

communication, must be placed in the record. All other parties to the proceeding may have the opportunity to respond to the prohibited communication, and such response may include a recommendation for sanctions. The administrative law judge or the Agency Head may determine whether sanctions are appropriate.

Section _____ 10 Filing papers.

This section addresses the time and manner of filing by incorporating a "mailbox rule" to determine when a document is deemed filed, and applying it to all common methods of transmitting documents.

The provision for transmission by electronic media authorizes filing by facsimile, computer modem, or other electronic media, but only where such method is authorized by the recipient of the filing, *i.e.*, the Agency Head or administrative law judge, as the case may be. It is recognized that such filings will be the exception rather than the rule, will seldom be appropriate for filings longer than a few pages, and can only be used where appropriate facilities are available. Nevertheless, it is contemplated that electronic filings will be useful in certain circumstances, such as where rapid rulings on motions and responses are necessary. The recipient of the filing, *i.e.*, the Agency Head or the administrative law judge, is accorded the discretion to determine when such circumstances exist. A concurrent filing of a paper copy is required to ensure that the requirements as to form, such as an original signature, are observed in electronic filings just as they must be in other filings.

Section _____ 11 Service of papers.

Where the person served has not made an appearance in the proceeding, the proposed Uniform Rules require that reasonable measures be taken to convey actual notice. The requirements regarding service upon a party that has made an appearance in a proceeding closely resembles the provision regarding filing. Service by electronic media is subject to mutual agreement among the parties; consequently, electronic service is not effective upon a party that has not consented to electronic service.

Section _____ 12 Construction of time limits.

The general rule on construction of time limits provides common rules for computing time limits, taking into account the effect of weekends and holidays. The rules as to when papers are deemed filed or served incorporate a "mailbox rule" applicable to mail and

commercial delivery services. The effective time for filing or service by electronic medium is to be specified by the person authorizing or agreeing to that means of filing or service. With regard to time limits for responsive pleadings, the rules incorporate a three-day extension for mail service, similar to the Federal Rules of Civil Procedure, and a one-day extension for overnight delivery, as contained in some agencies' existing rules. A one-day extension for service by electronic medium is proposed because experience shows that delays in actual receipt by the person served are peculiar to such media (*e.g.*, transmission after office hours, unattended facsimile machines, etc.)

Section _____ 13 Change of time limits.

Except as otherwise provided by law, the time limits prescribed by the Uniform Rules may be extended by the administrative law judge for good cause, prior to certification of the case to the Agency Head, and by the Agency Head after such certification. Motions for extension of time are subject to the rules generally applicable to motions.

Section _____ 14 Witness fees and expenses.

The provisions for witness fees and expenses implement the provisions of 12 U.S.C. 1818(n) and 12 U.S.C. 1786(p) that provide that fees and expenses for witnesses subpoenaed pursuant to these Uniform Rules shall be the same as for witnesses in United States district courts.

Section _____ 15 Opportunity for informal settlement.

This section makes explicit that informal settlement proposals by respondents must be made only through Enforcement Counsel and that settlement discussions may not be used to delay proceedings.

Section _____ 16 Agency's right to conduct examination.

This section states that nothing contained in the Uniform Rules shall be construed to limit the right of the Agency to conduct examinations or visitations of any institution or institution-affiliated party, or the right of the Agency to conduct any form of investigation authorized by law.

Section _____ 17 Collateral attacks on adjudicatory proceedings.

This section precludes the use of collateral attacks to circumvent or delay the administrative process and reflects

the anti-injunction provisions of 12 U.S.C. 1818(i) and 12 U.S.C. 1786(k)(1).

Section _____ 18 Commencement of proceeding and contents of notice.

This section contains the requirements relating to the initiation of adjudicatory proceedings, including the required content of a notice or order initiating a hearing.

Section _____ 19 Answer.

This section sets forth the time period in which to file an answer and the requirements of the answer. Failure to file a timely answer is deemed to be a waiver of the right to appear and a consent to the entry of an order granting the relief sought by the Agency in the notice. This section makes explicit that, in case of default, the administrative law judge, without any further proceedings, shall file with the Agency Head a recommended decision containing the relief sought in the notice.

Section _____ 20 Amended pleadings.

This section provides that the administrative law judge shall freely allow the parties to amend the notice or answer at any stage of the proceeding. Amendments to the notice and answer are not required when issues not raised by the notice or answer are tried at the hearing by express or implied consent of the parties.

Section _____ 21 Failure to appear.

A party's failure to appear at a hearing personally or by an authorized representative is deemed a waiver of the right to appear and a consent to the relief sought in the notice. When a party fails to appear, the administrative law judge shall file with the Agency Head a recommended decision containing the findings and the relief sought in the notice, without further proceedings or notice to the respondent.

Section _____ 22 Consolidation and severance of actions.

This section allows the consolidation of actions if the proceedings arise out of the same transaction, occurrence or series of transactions or if the proceedings involve at least one common respondent or a material common question of law or fact. Proceedings are not to be consolidated if to do so would unreasonably delay the proceeding or cause significant injustice.

Severance, on the other hand, may be granted by the administrative law judge only if the judge determines that undue prejudice or injustice would result from a consolidated proceeding and if such prejudice or injustice would outweigh

the interests of judicial economy and speed in the adjudication of actions. This is a higher standard than is required for the consolidation of actions.

Section _____ 23 Motions.

This section generally requires that all motions must be in writing, must state with particularity the relief sought, and must include a proposed order. The Uniform Rules permit supplementary materials such as briefs, written memoranda or other relevant material or documents to be filed in support of a motion. In addition, a party may make oral motions in the course of an adjudicatory proceeding, including any scheduling or prehearing conference, unless the administrative law judge requires that the motion be made in writing. Motions are to be submitted to the administrative law judge prior to the filing of the recommended decision; thereafter, motions are to be filed with the Agency Head.

Unless the administrative law judge or the Agency Head establishes another time period, a party will have ten days after service of a written motion to respond in writing to such motion. A party's failure to respond to a motion shall waive that party's right to oppose such motion and constitute consent to the entry of an order substantially in the form of the order accompanying the motion.

Frivolous or repetitive motions are not permitted and may be cause for sanctions.

Section _____ 24 Scope of document discovery.

This section provides for, and sets forth procedures governing, document discovery. Deposition discovery is discussed in the Local Rules.

All discovery, including all responses to discovery requests, must be completed at least 20 days before the scheduled hearing date, unless the Local Rules provide otherwise. Parties may seek all relevant material, including those matters that are reasonably calculated to lead to the discovery of admissible evidence. The Uniform Rules provide, however, that all applicable privileges may be asserted in response to a discovery request.

Section _____ 25 Request for document discovery from parties.

The Uniform Rules are modeled on the Federal Rules of Civil Procedure discovery practice in that all document discovery among parties is initiated by requests from the parties, and, except for the resolution of disputes, without the involvement of the administrative law judge. There is no continuing

obligation to update responses if the response was complete when made, unless the party subsequently learns that the response was materially incorrect when made or, through intervening events, is no longer correct and a failure to amend the response would be a knowing concealment.

This section provides that, when a discovery request seeks documents covered by applicable privileges, the party asserting the privilege must file a document index of such material. This section also contains procedures governing discovery disputes. In general, such disputes are resolved through motion practice before the administrative law judge. If the administrative law judge issues a subpoena compelling production and a party fails to comply with it, a subpoenaing party, to the extent authorized by law, may seek enforcement of such subpoena in any appropriate United States district court.

Section _____ 26 Document subpoenas to nonparties.

Parties may seek document discovery from nonparties through subpoenas issued by the administrative law judge upon the application of a party. Motions to quash or modify document subpoenas are governed by the same rules that apply to document requests by parties set forth in § _____ 25(d).

Section _____ 27 Deposition of witness unavailable for hearing.

In general, those material witnesses unavailable for hearing may have their testimony taken by deposition upon application to the administrative law judge for a deposition subpoena. The application must state that the witness is unavailable due to age, illness, infirmity or other reason and that the petitioning party was not the cause of the witness's unavailability. The witness and any party may object to the issuance of the subpoena within ten days of service of the subpoena. Unless quashed or modified by the administrative law judge, the subpoena may be enforced in United States district court.

Section _____ 28 Interlocutory review.

This section provides for a review by the Agency Head of an administrative law judge's ruling prior to the time when the record is certified to the Agency Head. Review will be granted only on the basis of the specific grounds enumerated in this provision.

A request for interlocutory review must be filed with the administrative

law judge within ten days of his or her ruling, and any party may file a response to such a request. The administrative law judge shall refer to the Agency Head for disposition all such requests for interlocutory review together with any responses.

The filing or granting of a request for interlocutory review does not stay the proceedings, unless the administrative law judge or the Agency Head so orders.

Section _____ 29 Summary disposition.

Section _____ 30 Partial summary disposition.

Any party to a proceeding may file a motion for summary disposition of a proceeding or for a partial summary disposition of a portion of a proceeding if: (1) There is no genuine issue as to any material fact; and (2) the moving party is entitled to a favorable decision as a matter of law. The motion must be accompanied by a statement of the uncontested material facts, a brief, and any documentary evidence in support of the motion. Within 20 days of service of a motion for summary or partial summary disposition, any other party may file his or her opposition to such motion. Parties opposing the motion for summary or partial summary disposition must file with their response a statement of material facts as to which a genuine dispute exists, a brief, and any documentary evidence in support of the opposition.

If the administrative law judge determines that summary disposition is warranted, a recommended decision to that effect is required to be submitted to the Agency Head. If only a portion of the proceeding warrants summary disposition, the administrative law judge will accordingly limit the issues for hearing to the remaining claims, while the issues which warranted summary disposition will be addressed in the administrative law judge's recommended decision filed at the conclusion of the hearing. Thus, the recommended decision of the administrative law judge will set forth both the issues determined by partial summary disposition and those determined after a hearing. This procedure avoids the piecemeal submission of recommended decisions to the Agency Head while encouraging judicial economy by limiting the hearing to those issues as to which there is a genuine controversy.

Section _____ 31 Scheduling and prehearing conferences.

A scheduling conference is mandatory under the Uniform Rules. The

conference must be held within 30 days of service of the notice or order commencing the proceeding. The purpose of the scheduling conference is to establish the course and conduct of the proceeding. Issues to be discussed at the scheduling conference include the identification of potential witnesses, the time for and the manner of discovery, and the exchange of any prehearing materials including proposed witness lists, statements of issues, stipulations, exhibits and any other documents determined to be appropriate.

Additional prehearing conferences may be held at the discretion of the administrative law judge or at the request of any party. These conferences would occur after the scheduling conference and would address issues such as: simplification and clarification of issues; stipulations, admissions of fact and the contents, authenticity or admissibility of evidence; matters requiring official notice; limitation of the number of witnesses; summary disposition of issues; resolution of discovery issues; amendments to pleadings; and other matters.

The presence of a court reporter at the scheduling conference or at any prehearing conference is within the discretion of the administrative law judge. Within a reasonable time following the conclusion of the scheduling or prehearing conference, the administrative law judge is required to serve on each party an order setting forth any procedural determinations and agreements made at the conference.

Section _____ 32 Prehearing submissions.

No later than 14 days prior to the start of the hearing, each party is required to serve on every other party the following documents: A prehearing statement; a final list of witnesses to be called to testify that includes a description of the expected testimony of each witness; and a list of prehearing exhibits along with a copy of each such exhibit and stipulations of fact, if any. The failure of a party to comply with this provision will preclude that party from presenting its witnesses or exhibits at the hearing, except for good cause shown.

Section _____ 33 Public hearings.

The proposed provision that hearings will be public rather than private unless otherwise determined by the Agency implements a statutory requirement established by the "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990" ("Fraud Prosecution Act"), Title XXV of the Crime Control Act of 1990, Public Law 101-647, 104 Stat. 4789. Within 20 days

of service of the notice, any respondent may file with the Agency Head a request for a private hearing, and any party may file a response to such a request. Failure to file such a request or response will preclude the raising of further objections on the issue of whether the hearing is public or private. The proposed section also implements a provision of the Fraud Prosecution Act by specifying that the Agency through its Enforcement Counsel may file under seal any document or any portion thereof, and that the administrative law judge will take all actions necessary to protect the confidentiality of such documents.

Section _____ 34 Hearing subpoenas.

A party may obtain a hearing subpoena at any time after the commencement of a proceeding, including during a hearing, so long as the testimony sought is relevant and reasonable. Once the administrative law judge has issued a subpoena pursuant to this section, only the subpoenaed person may move to quash or limit it. If a person fails to comply with a hearing subpoena, the subpoenaing party may, to the extent authorized by law, seek enforcement of the subpoena in any appropriate United States district court.

Section _____ 35 Conduct of hearings.

This section provides general rules for the conduct of hearings, the admissibility of stipulations, and the order in which the parties are to present their cases.

Section _____ 36 Evidence.

This section states that evidence that is relevant, material, reliable, and not unduly repetitive shall be admissible to the fullest extent authorized by the APA and other applicable law. Evidence which is admissible under the Federal Rules of Evidence is admissible in a formal proceeding governed by the Uniform Rules; however, evidence need not meet the standards of the Federal Rules to be admissible, as long as it is relevant, material, reliable and not unduly repetitive.

Official notice may be taken of any material fact which may be judicially noticed by a United States district court or which appears in the official public records of any Federal or state government agency. Unless there is a genuine material issue raised about the veracity and legibility of a document, duplicates may be used to the same extent as originals.

Subject to the general standards for admissibility, any document prepared by the appropriate Agency or state regulatory agency is admissible with or without a sponsoring witness. Such documents include a report of supervisory activity, examination, inspection or visitation. In the event that a witness is unavailable to testify in a hearing, a party may offer into evidence that witness's prior deposition testimony if all parties to the proceeding had notice and an opportunity to attend such deposition. Such deposition testimony is subject to the same standard of admissibility as other evidence.

Objections to the admissibility of evidence must be timely made. All rulings on objections shall appear on the record. A failure to object to the admission of evidence shall constitute a waiver of the objection.

Section _____37 Proposed findings and conclusions.

Section _____38 Recommended decision and filing of record.

Section _____39 Exceptions to recommended decision.

Section _____40 Review by Agency Head.

Section _____41 Stays pending judicial review.

These sections reflect no significant departures from the existing regulations of the Agencies.

Proposed findings and conclusions and any supporting briefs are to be submitted within 30 days after the transcript has been filed with the administrative law judge. Reply briefs are to be filed within 15 days thereafter.

Within 45 days of the time for filing reply briefs, the administrative law judge is to file with the Agency Head the record of the proceeding, including the recommended decision, findings of fact, conclusions of law, and proposed order.

The administrative law judge is also required to serve upon each party the recommended decision, findings, conclusions and proposed order. Any exceptions to the administrative law judge's recommendations are to be filed within 30 days after service of those recommendations.

The Agency Head will render its final decision within 90 days after it has notified the parties that the case has been submitted for final decision or after oral argument is held, whichever is later, unless the Agency Head remands the case to the administrative law judge for further proceedings.

E. Subpart-by-Subpart Summary and Discussion of Local Rules

1. OCC Local Rules

The Uniform Rules of administrative procedure in subpart A generally replace the procedures governing formal adjudications in 12 CFR part 19, subparts A-J. The OCC's Local Rules replace the procedures in subparts K-O of part 19 concerning certain formal and informal adjudications, practice before the OCC, and formal investigations. The text of subparts C, D, E, J, and K corresponds to the text of subparts K, M, L, N, and O, respectively, in the current part 19. In the event of inconsistency with the provisions of subpart A, the Local Rules will govern. The Local Rules also provide additional rules applicable to formal adjudications, discovery depositions, and other document filing with the OCC.

Subpart B—Filings With the Comptroller

This is a new provision which incorporates the procedures found in § 19.11. All materials to be filed with or referred to the Comptroller or the administrative law judge under part 19 are to be filed with the Hearing Clerk. This does not include requests for document discovery or responses to such requests because these documents are not required to be filed with the administrative law judge or the Comptroller. However, motions to limit discovery or to compel production would be filed with the Hearing Clerk because these documents are to be filed with the administrative law judge.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime is Charged or a Conviction is Obtained

This subpart applies to informal hearings afforded an institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by the Comptroller. The text of this subpart corresponds to the text of the existing subpart K, which has been incorporated into this subpart with the following changes:

a. The decisional authority of the presiding officer in § 19.113 has been revised to indicate that the officer shall issue a "recommended" decision instead of an "initial" decision. The proceedings in this subpart are informal in nature and not by statute subject to the Uniform Rules or the APA; however, in this instance, the OCC's informal procedures have been set up to parallel the Uniform Rules, which require the presiding officer to issue a recommended decision.

b. The term "OCC's interested division" is replaced with "OCC's Enforcement and Compliance Division".

c. Appropriate references to the Uniform Rules are incorporated into this subpart.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

This subpart applies to informal hearings that may be held by the Comptroller, pursuant to the authority of the Securities Exchange Act of 1934, to grant certain exemptions from the securities laws. The text of this subpart corresponds to the text of the existing subpart M, which has been incorporated into this subpart with only minor changes. As in the preceding subpart, these include the revision of the authority of the presiding officer to issue a "recommended" decision and the incorporation of appropriate references to the Uniform Rules.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

This subpart governs formal adjudications pursuant to the authority of the Exchange Act to take disciplinary actions against banks acting as, associated with, or seeking to become associated with a municipal securities dealer, a government securities broker or dealer, or a transfer agent.

The text of this subpart corresponds to the text of the existing subpart L, which has been incorporated into this subpart with only minor changes. The proceedings shall be instituted on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of assessment. Except as provided in this subpart, the Uniform Rules in subpart A will apply to these proceedings.

Subpart F—Civil Money Penalty Authority under the Securities Laws

This subpart governs formal adjudications pursuant to the authority of section 21B of the Exchange Act (15 U.S.C. 78u-2), as added by section 202 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101-429). These provisions provide for the issuance of civil money penalties against banks acting as, associated with, or seeking to become associated with a municipal securities dealer, a government securities broker or dealer, or a transfer agent.

The provisions of subpart A are applicable to these proceedings. The proceedings shall be instituted on a public basis Pursuant to § 19.33 of

subpart A, a request for a private hearing may be filed within 20 days of service of the notice of assessment.

Subpart G—Cease-and-Desist Authority Under the Securities Laws

This subpart governs informal adjudications pursuant to the authority of section 21C of the Exchange Act (15 U.S.C. 78u-3), as added by section 203 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 (Pub. L. 101-429). These provisions provide for the issuance of cease-and-desist proceedings against a bank for violation of certain provisions of the Exchange Act.

These proceedings are not "required by statute to be determined on the record after opportunity for an agency hearing," and thus are not "formal" adjudications subject to the APA. See 5 U.S.C. 554(a). The OCC has determined, however, that these proceedings should be conducted in a manner comparable to a formal adjudication to afford affected parties with the full procedures of the APA.

The Senate report accompanying the legislation appears to contemplate that the procedures governing these proceedings would be similar to the procedures for a formal adjudication. The report calls for a hearing before an administrative law judge and compares these proceedings to the formal cease-and-desist proceedings under the banking laws (12 U.S.C. 1818(b)):

Before the SEC may issue a permanent order, the SEC must provide a respondent with notice and opportunity for a hearing. A hearing before an administrative law judge must be set to commence no earlier than thirty days and no later than sixty days after issuance of the notice, unless the respondent consented to an earlier or later date. A respondent has the right to appeal an adverse decision by an administrative law judge to the full SEC, which considers the evidence *de novo*, the same right that respondents currently have in other SEC administrative proceedings. If the SEC affirms on appeal, the entry of a permanent cease-and-desist order may be appealed to a U.S. court of appeals in the same way as any other SEC order entered under the securities laws. This procedure is similar to that provided under the Federal Deposit Insurance Act with respect to FDIC cease-and-desist proceedings.

S. Rpt. No. 101-337, 101st Cong., 2d Sess. 19 (1990). See also H.R. Rep. No. 101-616, 101st Cong., 2d Sess. 24-25 (1990).

This subpart provides, therefore, that the provisions for formal adjudications in subpart A are applicable to these proceedings. The proceedings shall be commenced on a public basis. Pursuant to § 19.33 of subpart A, a request for a private hearing may be filed within 20 days of service of the notice of charges.

Subpart H—Change in Bank Control

This subpart governs formal adjudications under section 7(j) of the FDIA (12 U.S.C. 1817(j)) concerning the review of a determination by the Comptroller disapproving an application to acquire control of a national bank.

Upon the issuance of the OCC's written disapproval of a change-in-control application, the applicant may file a written request for a hearing within ten days after service of the notice of disapproval. To preserve the applicant's right to a hearing, an answer must also be filed within 20 days of the date of the notice, specifically denying those portions of the notice which are disputed. Failure to file a timely request for hearing or answer shall constitute a waiver of the opportunity for a hearing. In such a case, the notice of disapproval shall constitute a final and unappealable order.

As provided in § 19.18(a)(2) of subpart A, change-in-control proceedings shall commence with the issuance of an order by the Comptroller. This hearing order shall set forth the OCC's jurisdictional authority over the proceeding and shall address the applicant's request for hearing. Except as provided in this subpart, the Uniform Rules in subpart A will apply to these proceedings.

Subpart I—Discovery Depositions and Subpoenas

Discovery Depositions. This subpart provides that a party may take the deposition of an expert or of another person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding and where there is a need for the deposition. While permitting the depositions of experts and persons having direct knowledge of the matters at issue in a proceeding, this provision is not intended to allow unlimited deposition discovery or the taking of senior Agency officials' depositions, unless those individuals have direct knowledge about the facts of the case. Rather, it is intended to permit limited deposition discovery of experts and persons having direct knowledge of the facts who may be called on to testify at the administrative hearing.

Prior to taking a deposition, a party must give notice in writing to every other party to the proceeding. All discovery depositions must be completed within ten days of the scheduled hearing date, except with the permission of the administrative law judge for good cause shown.

During a deposition, each party shall have the right to examine the witness

with respect to all non-privileged, relevant, and material matters. Failure to object to questions or exhibits shall not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

At any time after a party receives notice of a deposition, that party may file a motion for a protective order prohibiting, terminating, or limiting the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition: is unreasonable, oppressive, excessive in scope, or unduly burdensome; involves privileged, irrelevant, or immaterial matters; involves unwarranted attempts to pry into a party's preparation for trial; or is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

Deposition Subpoenas. This subpart also provides that at the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The party requesting the subpoena is responsible for serving it on the person named therein, or on that person's counsel. The person named in the subpoena may file a motion to quash or modify the subpoena within the time for compliance set forth in the subpoena, but in no case later than ten days after the date of service. If the subpoena is served within 15 days of the hearing, the person named in the subpoena must file a motion to quash or modify the subpoena within five days after the date of service.

Subpart J—Formal Investigations

This subpart and the conflict of interest provision of the Uniform Rules (§ 19.8 of subpart A) shall apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate, pursuant to the authority of the banking laws and the Exchange Act. The text of this subpart corresponds to the text of the existing subpart N, which has been incorporated into this subpart with minor modifications to reference the Uniform Rules.

Subpart K—Parties and Representational Practice Before the OCC: Standards of Conduct

This subpart sets forth rules relating to parties and representational practice before the OCC, including the imposition of disciplinary sanctions against individuals who appear before the OCC in a representational capacity in an adjudicatory proceeding under this part

or in other matters relating to a client's rights, privileges, or liabilities. The text of this subpart corresponds to the text of the existing subpart O, which has been incorporated into this subpart with minor modifications to reference the Uniform Rules and to clarify the scope of the proceedings.

Subpart L—Equal Access to Justice Act

This subpart references the regulations governing Equal Access to Justice claims with respect to OCC formal adjudicatory proceedings.

2. Board of Governors Local Rules

In addition to the amendments to part 263 effected by the Uniform Rules, the Board of Governors (or "Board" in the Local Rules) proposes to make complementary amendments to part 263 which supplement the Uniform Rules (proposed subpart B), readopt portions of the current part 263 (proposed subparts C, D and E) and add new procedures to the Board's rules of practice (proposed subparts F and G).

Subpart B—Board of Governors Local Rules Supplementing the Uniform Rules

This subpart B adopts the Uniform Rules for all formal adjudications conducted by the Board, including the use of the Office of Financial Institution Adjudication in all formal proceedings. Proposed subpart B also supplements the Uniform Rules by providing for issues specific to the Board, such as definitions and addresses for filing papers and documents with the Board.

This subpart also includes amendments to the Board's rules for discovery by deposition in formal adjudicatory proceedings. In brief, the Board proposes that a party may depose an individual with knowledge of facts material and relevant to the underlying proceeding, who, in most cases, would be a prospective witness in a hearing. A party seeking to take a deposition must apply to the administrative law judge for the issuance of a subpoena, and any party may oppose such a request. Should a subpoena be issued, the person named in the subpoena may seek to have the subpoena quashed or modified. Any party or the deponent may also seek a protective order to guard against abusive or burdensome depositions. The Board believes that the judicious use of depositions of prospective witnesses will enhance the discovery process and will lead to the satisfactory settlement of actions before commencement of the hearing. The administrative law judge has the plenary authority to control the conduct of administrative proceedings, including discovery, and it is expected that such authority will be exercised to

ensure that discovery depositions are used properly and not for harassment or delay.

Subpart C—Procedures for Assessment of Civil Money Penalties

This proposed subpart adopts certain provisions of existing subpart B relating to the opportunity for informal proceedings and the relevant considerations in assessing fines. This subpart also provides that the Board, in any final order of assessment, may set the penalty at an amount that differs from that established in a notice of assessment.

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony is Charged or Proven

Except for minor changes noted below, this subpart, which governs suspension and removals under section 8(g) of the FDIA (12 U.S.C. 1818(g)), is readopted from the current part 263. Proposed subpart D has been modified by replacing the term "bank official" with the term "institution-affiliated party."

Subpart E—Procedures for Issuance and Enforcement of Directives to Maintain Adequate Capital

Proposed subpart E implements the capital directive provisions of the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*). Subpart E is readopted from the current Part 263, except that it eliminates the now-moot requirement found in current § 263.38(a) and amends the references to the now-applicable Capital Adequacy Guidelines of the Board of Governors.

Subpart F—Practice Before the Board

This subpart contains provisions for the discipline of practitioners before the Board supplementing the proceeding-specific sanctions contained in subpart A. This subpart represents a significant expansion of the Board's existing rules regarding practice before the Board now set forth in § 263.3(b). The proposed rule defines practice broadly to include not only the representation of parties in administrative enforcement proceedings, but the representation of parties in the Board's application and licensing process.

The proposed rule authorizes the Board to censure, suspend or debar an individual from practice before the Board under specified circumstances. For example, the Board could take disciplinary actions against a practitioner if such person engaged in conduct set forth in § 263.94, refused to comply with the procedures set forth in

part 263, or willfully or knowingly deceived or misled any client. The kind of conduct set forth in § 263.94 that could give rise to a disciplinary proceeding include willful violations of Federal banking laws, knowingly giving false or misleading information to the Board or any member of the Board's staff, disbarment or suspension from practice as an attorney or accountant by the appropriate authority based on a criminal conviction, or suspension or debarment of practice before the other agencies, or the Securities and Exchange Commission.

Under proposed § 263.95, the Board, at its option, may act upon information that could form the basis of a disciplinary proceeding. The Board may, without any further proceeding, censure the individual involved in the misconduct. The Board may, after giving the individual notice and an opportunity to respond, initiate a formal proceeding, which, in most cases, will be private. Under proposed § 263.96, an individual charged with misconduct may choose to forgo his or her right to a hearing and voluntarily agree to a suspension or debarment.

Proposed § 263.98 sets forth the effect of the various types of disciplinary orders that the Board may issue. A person who has been debarred cannot practice before the Board unless the individual is otherwise permitted by the Board. Suspension orders are effective for a defined term, during which the suspended person cannot practice before the Board. A censure order will not bar an individual from practice before the Board, although such practice must conform to any conditions imposed by the Board. The Board will grant a petition for reinstatement from any debarred person only when the Board finds that the petitioner will act in accordance with the appropriate standards of conduct and that reinstatement is not contrary to the public interest. Section 263.99 provides that a request for reinstatement will be limited to written submissions unless the Board orders an informal hearing.

These proposed rules, while new to the Board, resemble rules that have been adopted in varying forms by the other banking agencies and by other Federal agencies. The Board contemplates applying these disciplinary sanctions only in egregious cases of misconduct in practice before the Board, and after the practitioner has had an opportunity for a formal hearing.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

This subpart implements the provisions of the Equal Access to Justice Act, 5 U.S.C. 504. The proposed regulation establishes eligibility standards for an award, the required contents of an application for an award, including the required statement of net worth, standards for the reasonableness of claimed fees, and procedures for adjudicating an application for an award.

3. FDIC Local Rules

Subpart B—General Rules of Procedure

Section 308.100, "Definitions", defines the term "Board of Directors" and "designee" of the Board of Directors ("Board"). The term "designee of the Board of Directors" means officers or officials of the FDIC who have been delegated authority to act on behalf of the Board under section 303 of the FDIC's regulations, or by separate resolution of the Board. The term "Executive Secretary", pertaining to the Executive Secretary of the FDIC, is defined to include his or her designee. The definitions of these terms apply to their use in subpart A of part 308, which incorporates the Uniform Rules, and subparts B through P of part 308.

Section 308.101, "Scope of Local Rules," makes clear that the rules contained in subpart A, "Uniform Rules", and subpart B, "General Rules of Procedure", of part 308 do not apply to subparts D through P of part 308 unless specifically provided. Subpart C, "Rules of Practice Before the FDIC and Standards of Conduct" shall apply to any proceeding initiated by the FDIC under part 308.

Section 308.102, "Authority of Board of Directors and Executive Secretary", makes explicit that the Board may perform, direct the performance of, or waive the performance of any act which could be done or ordered by the Executive Secretary. This is in addition to the power to do such with regard to any act that could be performed by the administrative law judge. The rule provides that the Executive Secretary shall have the ability to act in place of the administrative law judge but may not hear a case on the merits or make a recommended decision.

Section 308.103, "Appointment of administrative law judge", contains the procedures by which the appointment of an administrative law judge will be accomplished. It provides that all hearings within the scope of part 308 shall be held before an administrative law judge of OFIA unless the Board directs otherwise, or unless the Local

Rules specifically provide to the contrary. The Executive Secretary shall immediately upon the issuance of a Notice, refer a proceeding to OFIA for the appointment of the administrative law judge. OFIA shall then advise the parties when a judge has been appointed. This differs from current practice insofar as an administrative law judge is not now appointed until after a respondent requests a hearing. It also reflects the establishment of OFIA as the appointing body rather than the Executive Secretary.

Sections 308.104 and 308.105 address housekeeping matters concerning maintenance of the record and the filing of papers. Section 308.104, "Filing with the Board of Directors", makes clear that any papers required to be filed with the Board should be filed with the Executive Secretary at the stated address. Such filings include the record in the case which is to be filed with the Executive Secretary following the issuance of a recommended decision; the recommended decision filed by the administrative law judge after a motion for summary disposition; referrals by the administrative law judge to the Board for interlocutory review; motions filed by the parties after the record has been certified to the Board; exceptions and requests for oral argument; and any other papers required to be filed with the Board under part 308. This reflects the approach stated in § 308.105 that the Executive Secretary will be the official custodian of the record in a case, except when the administrative law judge has jurisdiction over the case.

Section 308.105, "Custodian of the record", makes clear that the Executive Secretary is the official custodian of the record at all times during which the administrative law judge does not have jurisdiction in the case.

Section 308.106, "Written testimony in lieu of oral hearing", preserves current practice at the FDIC, which authorizes hearings in which most, or all, of the direct testimony is presented in written form. Absent objection by a party, the administrative law judge may order that the parties present their cases in chief and rebuttal in the form of exhibits and written statements sworn to by the witness offering the evidence. Any such order shall also allow any party to call adverse witnesses or parties to testify orally, and shall provide for a right to cross examination. Written testimony on direct, exhibits, and rebuttal are to be simultaneously submitted by the parties. The failure of any party to submit written testimony pursuant to such an order is deemed to be a waiver of that party's right to present evidence, except the testimony of a previously identified

hostile witness or adverse party. A party's failure to present rebuttal evidence in written form, if not so specifically ordered, is not waived by that party's failure to file written testimony. Late filings may be allowed and accepted only for good cause shown.

Section 308.107, "Document discovery", provides that unless expressly provided in specific subparts, discovery may be had only through the production of documents, and no other form of discovery shall be allowed. Questioning of persons providing documents pursuant to a subpoena shall be limited to the identification of such documents and a reasonable examination as to whether such person conducted an adequate search for and produced all subpoenaed documents. This is the current practice of the FDIC.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

Section 308.108, "Sanctions," is included in revised subpart C to make clear that administrative law judges and the Board of Directors have authority to effectively deal with the significant problem of parties and their counsel failing to comply with the requirements of part 308 and/or with orders. Under § 308.108(a), sanctions may be imposed when any counsel or party has acted in a manner contrary to any applicable statute, regulation, or order, and the party's or counsel's conduct is contemptuous or has materially injured or prejudiced some other party.

Sanctions imposed in accordance with § 308.108(b) may include one or more of the following: (1) Issuing an order against the party; (2) striking any testimony, rejecting any documentary evidence offered, or striking papers filed by the party; (3) precluding the party from contesting specific issues; (4) precluding the party from challenging certain evidence offered by another party; (5) refusing a late filing or conditioning acceptance of a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by the other party as a result of the offending party's improper action or inaction.

Under § 308.108(c), dismissal of an action as a sanction for the failure to hold a hearing within the time period specified in part 308 or based upon the failure of an administrative law judge to render a recommended decision within the time period specified in Part 308 may only be granted if the delay is solely the result of the conduct of the FDIC enforcement counsel, that conduct is unexcused, the moving respondent took

all reasonable steps to oppose and prevent the delay, the respondent has been materially prejudiced or injured, and no lesser or different sanction is adequate.

Paragraph (d) of § 308.108 sets out the general procedure for the imposition of sanctions. The administrative law judge may impose sanctions on his or her own motion or at the request of any party. Prior to their imposition, all sanctions, except the refusal to accept late papers, require notice to the parties and opportunity for counsel or the party against whom sanctions would be imposed to be heard. The form that the opportunity to be heard shall take is largely left to the discretion of the administrative law judge. For example, the opportunity to be heard may be limited to an oral response immediately after the violative action or inaction is noted by the administrative law judge. Requests for, and the imposition of, sanctions are to be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge, i.e., in accordance with § 308.28 of the Uniform Rules.

Section 308.109, "Suspension and Disbarment," authorizes summary suspension from practice in a particular FDIC matter based upon contemptuous conduct in that matter. Section 308.109 of the proposed regulations provides for mandatory and automatic suspension and disbarment of attorneys under certain circumstances and gives the Board of Directors discretion to suspend and disbar under other circumstances.

Under § 308.109(a), the Board of Directors has the power to suspend or revoke an attorney's privilege of practicing before the FDIC based not only on a finding by the Board of Directors that the attorney engaged in contemptuous conduct before the agency, but also upon a finding that the attorney does not possess the requisite qualifications to represent others, is seriously lacking in integrity or has engaged in material unethical or improper professional conduct, or has engaged in or aided another in engaging in a material and knowing violation of the FDIA. The Board may suspend or revoke the privilege to practice before the FDIC on these grounds only after notice of and opportunity for a hearing.

Once suspended or disbarred from practice before the FDIC by the Board pursuant to § 308.109(a), a counsel may not make an application for reinstatement for at least three years, and thereafter may make a new request for reinstatement no sooner than one year after the counsel's most recent reinstatement application. A counsel

may be reinstated by the Board for good cause shown.

Under § 308.109(b) a party's counsel is automatically suspended or disbarred if he or she is suspended or disbarred by any court of the United States or by the OCC, the Board of Governors, the OTS, the Securities and Exchange Commission, or the Commodity Futures Trading Commission. A person who has within the past ten years been convicted of a felony, or of a misdemeanor involving moral turpitude, is also automatically suspended from practicing before the FDIC.

Reinstatement after a suspension or disbarment under § 308.109(b) may be made by the Executive Secretary if all grounds for suspension are subsequently removed by a reversal of the conviction or termination of the underlying suspension or disbarment. An application for reinstatement under § 308.109(b) on any other grounds may be filed at any time not less than one year after the applicant's most recent application. Until the Board has reinstated the applicant for good cause shown, the suspension shall continue.

An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Hearings conducted pursuant to this section shall be handled in the same manner as other hearings under this subpart C, except that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination shall bear the burden of going forward with the application and with proof, and provided that the Board of Directors may limit any such hearings to written submissions.

Finally, § 308.109(d) of the proposed regulations provides that any counsel found in contempt by the administrative law judge may be summarily suspended from participation in that proceeding.

Preamble to Subparts D-P

Subparts D-P contain rules and procedures that govern specific types of formal and informal proceedings conducted by the FDIC. Generally, revisions made to these subparts are either clarifying in nature or were made to conform the subparts to, or avoid overlaps with, the Uniform Rules.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

Subpart D governs proceedings in connection with the disapproval of a proposed acquisition of control of an insured nonmember bank. Various changes made to subpart D were made

to make this subpart consistent with the Uniform Rules. A new section, § 308.114, was added to this subpart on procedures relating to disapproval of acquisition of control. That section provides that the person proposing to acquire control of an insured depository institution shall bear the ultimate burden of persuasion and that the FDIC has the burden of going forward with a *prima facie* case. This accords with section 556(d) of the APA (5 U.S.C. 556(d)), which states "Except as otherwise provided by statute, the proponent of the rule or order has the burden of proof." Courts have interpreted this section as imposing the burden of proof in licensing or applications cases upon the applicant. See *Savage v. Commodities Futures Trading Commission*, 548 F.2d 192 (7th Cir. 1977). The FDIC has adopted this position in *In the Matter of Peder D. Sletteland*, 2 P-H FDIC Enf. Dec. & Ord. ¶ 5152, at p. A-1518.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessments of Civil Penalties for Willful Violations of the Change in Bank Control Act

Subpart E governs proceedings relating to assessments of civil penalties for willful violations of the Change in Bank Control Act. This subpart has been revised in order to comply with the changes to these provisions made by FIRREA and to make this subpart consistent with the Uniform Rules.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

Subpart F governs proceedings for the involuntary termination of insured status. This type of action is to be conducted according to the Uniform Rules. Similar to the preceding subparts, this subpart has been changed to make the provisions conform with the changes to the FDIA made by FIRREA. This includes changing the time frames to correspond with those of FIRREA, substituting the term, "insured depository institution," for that of "insured bank" and describing the notification to primary regulator and the notice of intent to terminate insured status.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

Subpart G governs proceedings relating to cease-and-desist orders. The changes in subpart G were made for purposes of clarity and to make changes to the provisions as mandated by the

amendments to the FDIA made by FIRREA.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes

Subpart H governs proceedings relating to assessment and collections of civil money penalties for the violation of cease-and-desist orders and of certain Federal statutes. Several sections of old subpart H have been deleted as being redundant with provisions of the Uniform Rules and other provisions, including those concerning call report penalties, have been added to reflect the changes made by FIRREA.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

Subpart I governs procedures for the imposition of sanctions upon municipal securities dealers or persons associated with them and clearing agencies or transfer agents. There have been minor modifications made in this subpart in order to make the provisions herein consistent with the Uniform Rules.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

Subpart J governs exemption proceedings under section 12(h) of the Exchange Act. Like subpart J, there have been minor structural changes in order to make these provisions consistent with the Uniform Rules.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the FDIA

Subpart K governs procedures applicable to investigations pursuant to section 10(c) of the FDIA. The provisions are designed to spell out the scope of the FDIC's authority under 10(c) of the FDIA to conduct investigations of both open and failed insured banks, institutions making applications to become insured banks, and any other types of investigations. The provisions make specific certain of the procedures to be used during such investigations.

Section 308.144, "Scope," indicates that the FDIC's investigatory power under section 10(c) of the FDIA extends to both open and failed insured banks.

Section 308.145, "Order to conduct investigation," has been modified to state that persons authorized to issue orders of investigation are set forth in

part 303. The order of investigation indicates the purpose of the investigation and that the persons who authorized the investigation terminate it upon completion.

Section 308.146, "Powers of Person Conducting Investigation," spells out the Board's authority to summarily suspend for contemptuous conduct any counsel representing a witness during the investigation. This section also has made explicit that the person conducting the investigation may obtain assistance from others both within and outside the FDIC.

Section 308.148, "Rights of Witnesses," spells out that a witness is to be furnished with a copy of the order of investigation if the witness so requests.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

Subpart L governs proceedings for the disapproval of candidates for senior executive officer and director. Modifications in this subpart include redesignating the appeal procedures in §§ 308.153 and 308.154 and labeling them "request for review," as well as making these provisions consistent with the Uniform Rules. Under § 308.155, an applicant is given an opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witnesses. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record. Like the provisions on change-in-control proceedings in subpart D, the ultimate burden of persuasion in § 308.155(b) is imposed upon the candidate for director or senior executive officer for the same rationale, and the FDIC has the burden of going forward with its *prima facie* case.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

Subpart M governs proceedings for applications under section 19 of the FDIA. This subpart has been revised in order to comply with the changes to section 19 made by FIRREA and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990, and to make this subpart consistent with the Uniform Rules. Section 308.158(b) of subpart M permits the filing of a section 19 application at any time more than one year after the issuance of a decision denying an application filed pursuant to section 19. Under § 308.160, an applicant is given an

opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witness. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record. Like the provisions for the change-in-control proceedings and the procedures for section 32 of the FDIA, the burden of proof in § 308.160(b) has been shifted to the applicant, and the FDIC has the burden of going forward with its *prima facie* case.

Subpart N—Rules and Procedures Applicable to Proceeding Relating to Suspension, Removal, and Prohibition Where a Felony is Charged

Subpart N governs proceedings for suspension, removal, and prohibition pursuant to section 8(g) of the FDIA where a felony is charged. The changes in subpart N were made for purposes of clarity and to make changes to the provisions as mandated by the amendments to the FDIA made by FIRREA. Consistent with other proceedings in which a presiding officer makes recommended decisions to the Board of Directors, there is no discovery in proceedings conducted under this subpart.

Subpart O—Liability of Commonly-Controlled Depository Institutions

Subpart O is a new subpart of part 308 and governs proceedings pertaining to section 5(e) of the FDIA. The procedures set forth herein reflect those that have been used by the FDIC under current part 308 since the passage of section 5(e) of the FDIA.

Section 308.165, "Scope", states that, in addition to the procedures set forth in this subpart, the procedures in subpart B shall apply to proceedings in connection with the assessment of cross guaranty liability against commonly-controlled institutions. Section 308.166, "Grounds for assessment of liability", restates the statutory requirements for the assessment of liability.

Section 308.167, "Notice of Assessment of Liability", sets forth the matters that must be contained in the Notice of Assessment of Liability, including the basis for the FDIC's jurisdiction; a statement of the FDIC's good faith estimate of the amount of loss that it has incurred or anticipates incurring; a statement of the method used to calculate such loss; a proposed order directing the payment by the liable institution of the amount of loss and the schedule under which the payment will be due; and, in cases in which more than

one liable institution is involved, each institution's share of the liability. Furthermore, the Notice must advise the liable institution(s) that an answer and a request for a hearing must be filed within 20 days of the service of the Notice, and that failure to timely file both an answer and request a hearing will render the Notice of Assessment a final and unappealable order. Finally, the Notice must state that, if a hearing is requested, such hearing will be held 120 days after service of the Notice in the judicial district where the liable institution is located; or in cases involving more than one liable institution, the hearing will be held in the judicial district in which at least one of the institutions is found.

Section 308.168, "Effective date of and payment under an order to pay", makes clear that the payment of the assessed amount shall be due on or before the 21st day after service of the Notice of Assessment in accordance with the terms and schedule set forth therein. Where any Order to Pay has become final and unappealable by reason of default under § 308.19(d)—which provides that failure to both file an answer and request a hearing within the time limits provided by this subpart shall render the Notice of Assessment final and unappealable—payment shall automatically be deemed to have become due and payable upon service of the Order to Pay, or as otherwise stated therein. All payments collected under section 5(e) of the FDIA are to be paid to the FDIC.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

Subpart P governs proceedings relating to the recovery of attorney fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504. The revisions to this subpart are minor and are made to make this subpart conform to the Uniform Rules.

Regulatory Factors

Part 308 was selected for review under FDIC's Regulation Review Program (see 50 FR 14247, April 22, 1985). This revised part 308 is a result of the review conducted.

4. OTS Local Rules

In addition to the uniform hearing rules proposed today, OTS proposes additional procedures and rules of practice for OTS adjudicatory proceedings. These include applying the uniform rules to OTS-specific proceedings (§ 509.100), allowing the use of depositions in discovery (§ 509.102), providing further clarification for the

assessment and collection of civil money penalties (§ 509.103) and providing further procedural guidance (§ 509.104). OTS is also proposing several conforming amendments to modify cross references and to delete nonexistent terms.

Section 509.100 Scope

The three types of proceedings added by this provision are currently covered by part 509; however, they are not proceedings common to four of the five agencies and did not qualify for inclusion in the uniform rules. Accordingly, they are listed in the OTS scope.

Section 509.101 Appointment of OFIA.

Currently, OTS does not employ its own administrative law judges and must borrow such judges from other federal agencies pursuant to the requirements of the Office of Personnel Management. Section 916 of FIRREA also requires the five federal regulatory agencies to jointly create a pool of administrative law judges. Creation of the Office of Financial Institution Adjudication implements this portion of FIRREA. As the time frame for creation of OFIA is the same as for the promulgation of the Uniform Rules, modification of OTS procedures to reflect OFIA is appropriate.

Section 509.102 Deposition Discovery.

OTS proposes to change its procedures to permit the use of depositions in discovery in certain situations. This section provides that a party may take the deposition of an expert or another person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding. The scope of the questioning is limited to those matters that the witness has factual, direct and personal knowledge. Depositions of experts are limited to those experts who will testify at the hearing.

These standards for depositions are intentionally narrower than those provided in Rule 26 of the Federal Rules of Civil Procedure. The use of depositions in discovery pursuant to this section is not intended to reach persons whose testimony may lead to discoverable information or material. In this manner the proposed rule is significantly more restrictive than the Federal Rules of Civil Procedure.

In addition, this limitation is intended to discourage attempts to depose Agency personnel who have no direct, factual knowledge of a proceeding. This means that those Agency employees who have not participated directly or

personally in the examination process or direct supervision of savings associations would not qualify under the scope limitation unless they are substantially and materially involved. This means that the senior management officials of the Agency, including, but not limited to, the Director, the Chief Counsel, the Deputy Director for Washington Operations, the Deputy Director for Regional Operations, and Regional and District Directors of OTS or persons in equivalent or similar positions are not considered relevant or material witnesses for deposition discovery purposes. By limiting deposition discovery in this manner, OTS believes that it will serve the interests of justice without unduly handicapping its ability to conduct the business of the agency.

The procedures for deposition discovery require a party, prior to taking a deposition, to give notice in writing to the deponent and to every other party to the proceeding. All discovery depositions must be completed within ten days of the scheduled hearing date, except with the permission of the administrative law judge for good cause shown.

During a deposition, each party shall have the right to examine the witness with respect to all non-privileged, relevant, and material matters for which the witness has factual, direct and personal knowledge. Failure to object to questions or exhibits shall not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented.

At any time after a party receives notice of a deposition, that party may file a motion for a protective order prohibiting, terminating, or limiting the scope of manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition: is unreasonable, oppressive, excessive in scope, or unduly burdensome; involves privileged, investigatory, trial preparation, irrelevant or immaterial matters; or is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

The section also provides that at the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The party requesting the subpoena is responsible for serving it on the person named therein, or on that person's counsel. The person named in the subpoena or a party may file a

motion to quash or modify the subpoena within the time for compliance set forth in the subpoena, but in no case later than ten days after the date of service. If the subpoena is served within 25 days of the scheduled date of the hearing, the motion to quash or modify the subpoena must be filed within five days after the date of service. Enforcement of the subpoena is the same as provided in subpart A at § 509.27(d).

Section 509.103 Civil Money Penalties

The proposed provision updates existing provisions in subpart B of 509 and affirmatively states the long held OTS position as to the remedial nature of civil money penalties.

Section 509.104 Additional Procedures

This proposed section adds further clarification or guidance to the uniform rules. Paragraph (a) provides for the filing of replies to written exceptions to an administrative law judge recommended decision. It is OTS's experience that replies to exceptions assist in the final determination; however, they should not be used to further prolong the proceeding. Accordingly, a 10 day period to file replies is provided.

Paragraph (b) emphasizes that all motions are to be filed with the administrative law judge; however, upon certification of the proceeding to the Agency Head, motions are filed with OTS during a limited ten-day time period. This limited period of time for filing motions coincides with the time for filing replies to written exceptions. Failure to file within this ten day time period will provide a basis for denying the motion.

Relatedly, paragraph (c) states expressly what has been an implied power of the administrative law judge to deny dispositive motions including motions to dismiss for lack of jurisdiction. Because most often such motions may be dismissed readily for lack of merit, clarifying the administrative law judge's authority in this area will prevent such motions from delaying proceedings.

Paragraph (d) proposes to set a time by which OTS will notify the parties of the submission of the proceeding for final determination. This will clarify when the 90 day period for final determination begins.

Paragraph (e) proposes to clarify the ability of the Director to extend the time for final determination in accord with *Saratoga Savings & Loan Ass'n v. Fed. Home Loan Bank Board*, 879 F.2d 689 (9th Cir. 1989). The Director may extend the time provided by signing the order for such extension. Notification of the

extension is to be made after the order has been signed, but the notification of the extension is not required to be within the 90 day period.

Paragraph (f) clarifies existing practices at OTS to allow designated individuals or offices to receive adjudicatory filings. The proposed provision grants OTS greater flexibility to reflect its current structure and to meet changing personnel demands rather than limiting the provision to one particular office.

Paragraph (g) also clarifies the powers of the administrative law judge concerning the presence of electronic media at public hearings. It reserves for the Agency Head of OTS the decision whether to allow the presence of electronic media; however, the administrative law judge maintains the authority to conduct the hearing and set general guidelines over the time, place and manner for attendance at hearings as set forth in § 509.5(10).

The remaining proposed amendments are technical amendments to conform cross-referenced sections and to delete obsolete terms.

5. NCUA Local Rules

Subpart A sets forth Uniform Rules of practice and procedure required by FIRREA to be implemented by the five Agencies. The Uniform Rules comprehensively govern the conduct of administrative hearings required by the APA to be held on the record. The Uniform Rules replace the NCUA's own rules of practice and procedure contained in the existing subpart A.

In addition, the Uniform Rules govern the conduct of administrative hearings addressing actions by the NCUA to issue a cease-and-desist order, to assess civil penalties, and to prohibit, remove or suspend credit union officials. Because the Uniform Rules incorporate the functions of the existing subparts C, D and E pertaining to these types of actions, the new subpart A replaces these existing subparts.

Finally, the provisions of the Uniform Rules supplement the rules and procedures prescribed in the new subparts C, E, and I, which provide for formal adjudications, except when the new subpart A is inconsistent with those rules and procedures.

Subpart B—Local Rules of Practice and Procedure

This subpart is reserved for "Local Rules of Practice and Procedure" which the NCUA may develop in the future to apply to proceedings unique to the NCUA. Such Local Rules would augment the Uniform Rules prescribed in subpart A.

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

This subpart redesignates and renumbers existing subpart B governing proceedings to terminate the insured status of a credit union. Such proceedings are formal adjudications. The text of existing subpart B is imported without revision, except that its scope now incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of subpart C.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

This subpart redesignates and renumbers existing subpart F, governing proceedings to suspend or prohibit from participation in the affairs of a credit union any institution-affiliated party which is charged with a felony. Such proceedings are not formal adjudications. The text of existing subpart F is imported substantially without revision. Cross-references in existing § 747.602 to certain rules of practice in existing subpart A have, due to the elimination of that subpart, been replaced in new § 747.302 with the text of the former rules. Likewise, cross-references in existing § 747.507 to § 747.602 ["Remainder of the Board of Directors"] of existing subpart E have, due to the elimination of that subpart, been replaced in new § 747.302 with the text of former § 747.507. The text of these and other provisions of new subpart D (§§ 747.302, 747.306, and 747.307) contain technical revisions to clarify and reflect that proceedings under this subpart are not formal adjudications conducted by an administrative law judge, but rather, are limited, informal proceedings conducted by a Presiding Officer designated by the Board. New subpart D does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to informal adjudications.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

This subpart redesignates and renumbers existing subpart G governing proceedings to suspend or revoke a solvent credit union's charter and to place a solvent credit union into involuntary liquidation under Title I of the FCUA. See 12 U.S.C. 1766(b)(1). Such proceedings are formal adjudications.

The text of existing subpart G is imported without revision, except that the scope of new subpart E incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of new subpart E. New subpart E also contains technical revisions to clarify and reflect that a hearing requested under this subpart is referred by the Board to OFIA and conducted by an administrative law judge.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility

This subpart redesignates existing subpart H, which is reserved for rules and procedures governing proceedings to terminate a credit union's membership in the NCUA's Central Liquidity Facility.

Subpart G—Rules and Procedures Applicable to Recovery of Attorneys Fees and other Expenses Under the Equal Access to Justice Act in Board Adjudications

This subpart redesignates and rennumbers existing subpart I governing claims proceedings under the Equal Access to Justice Act. Such proceedings are formal adjudications. The text of existing subpart I is imported without revision except for the following revisions to its scope and to the eligibility and application requirements for an award. First, new § 747.601 incorporates the provisions of the Uniform Rules, as set forth in subpart A, to the extent they are not inconsistent with the rules and procedures of new subpart G. Second, paragraph (b) of existing § 747.801 has been eliminated as moot, as there is no adjudication currently pending before the NCUA which was begun prior to September 30, 1984. Third, in new § 747.602(a), the maximum net worth of an individual applicant for an award has been increased to \$2 million, and the maximum net worth of an applicant who is a sole proprietor of an unincorporated business or which is a partnership, corporation, association, or public or private organization, has been increased to \$7 million. These increases in maximum net worth are mandated by amendments to the Equal Access to Justice Act. Finally, in new § 747.606(c), the statement that the application and documentation requirements of subpart G are exempt from the Paperwork Reduction Act has been eliminated as superfluous. The exemption clearly applies, however, because a decade of experience with the Equal Access to

Justice Act has shown that fewer than ten persons or entities in a 12-month period will be subject to the application and documentation requirements of subpart G. See 5 CFR 1320.7(c) and 1320.7(s).

Subpart H—Local Rules and Procedures Applicable to Investigations

This subpart redesignates and rennumbers existing subpart J governing both formal and informal investigations conducted by the NCUA. Such investigations are not adjudicative proceedings. The text of existing subpart H is imported without revision. New subpart H does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

This subpart redesignates and rennumbers existing subpart K governing formal investigations conducted by the NCUA. Such investigations are not adjudicative proceedings. The text of existing subpart K is imported without revision. New subpart I does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the Act

This subpart redesignates and rennumbers existing subpart L governing notice to the NCUA of a change in senior executive officers, directors or committee members of a credit union. The notice procedure is not a formal adjudication. The text of existing subpart L is imported without revision. New subpart J does not incorporate the Uniform Rules, as set forth in subpart A, because those rules do not apply to non-adjudicative proceedings.

F. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, Board of Governors, FDIC, OTS, and NCUA, hereby independently certify that this notice of proposed uniform rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

This rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings.

The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings. Because the Agencies already have in place rules of practice and procedure, this rule should not result in an additional burden for regulated institutions. Furthermore, the rule imposes only minor burdens on all institutions, regardless of size and should not, therefore, cause a significant economic impact on a substantial number of small entities.

G. OCC and OTS Executive Order 12291 Statement

The OCC and the OTS have independently determined that this notice of proposed uniform rule does not constitute a "major rule" within the meaning of Executive Order 12291 and Treasury Department Guidelines. Accordingly, a Regulatory Impact Analysis is not required on the grounds that this notice of proposed common rule, if adopted as a final rule: (1) Would not have an annual effect on the economy of \$100 million or more, (2) would not result in a major increase in the cost of financial institution operations or governmental supervision, and (3) would not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation, within the meaning of the executive order.

This rule implements section 916 of FIRREA which requires the Federal banking agencies and the NCUA to develop a set of uniform rules and procedures for administrative hearings. Because the Agencies already have in place rules of practice and procedure, these rules should not result in an additional burden for regulated institutions or in additional governmental supervision. These rules setting forth uniform standards of administrative procedure would not have a significant impact on competition or impose other significant economic burdens.

H. NCUA Executive Order 12612 Statement

This proposed rule, like the current part 747 it is replacing, will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined, however, that the proposed rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Further, the proposed rule

will not preempt provisions of state law or regulations.

I. Text of Proposed Uniform Rules (All Agencies)

The text of the proposed Uniform Rules appears below. Additionally, each Agency is adopting Local Rules to supplement the Uniform Rules.

Subpart A—Uniform Rules of Practice and Procedure

Sec.

- ____.1 Scope.
- ____.2 Rules of construction.
- ____.3 Definitions.
- ____.4 Authority of Agency Head.
- ____.5 Authority of the administrative law judge.
- ____.6 Appearance and practice in adjudicatory proceedings.
- ____.7 Good faith certification.
- ____.8 Conflicts of interest.
- ____.9 Ex parte communications.
- ____.10 Filing of papers.
- ____.11 Service of papers.
- ____.12 Construction of time limits.
- ____.13 Change of time limits.
- ____.14 Witness fees and expenses.
- ____.15 Opportunity for informal settlement.
- ____.16 Agency's right to conduct examination.
- ____.17 Collateral attacks on adjudicatory proceeding.
- ____.18 Commencement of proceeding and contents of notice.
- ____.19 Answer.
- ____.20 Amended pleadings.
- ____.21 Failure to appear.
- ____.22 Consolidation and severance of actions.
- ____.23 Motions.
- ____.24 Scope of document discovery.
- ____.25 Request for document discovery from parties.
- ____.26 Document subpoenas to nonparties.
- ____.27 Deposition of witness unavailable for hearing.
- ____.28 Interlocutory review.
- ____.29 Summary disposition.
- ____.30 Partial summary disposition.
- ____.31 Scheduling and prehearing conferences.
- ____.32 Prehearing submissions.
- ____.33 Public hearings.
- ____.34 Hearing subpoenas.
- ____.35 Conduct of hearings.
- ____.36 Evidence.
- ____.37 Proposed findings and conclusions.
- ____.38 Recommended decision and filing of record.
- ____.39 Exceptions to recommended decision.
- ____.40 Review by Agency Head.
- ____.41 Stays pending judicial review.

Subpart A—Uniform Rules of Practice and Procedure

§ ____1 Scope.

This subpart prescribes rules of practice and procedure applicable to

adjudicatory proceedings as to which hearings on the record are provided for by the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act ("FDIA") (12 U.S.C. 1818(b)) and section 206(e) of the Federal Credit Union Act ("FCUA") (12 U.S.C. 1786(e));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 2828(e)), and section 206(g) of the FCUA (12 U.S.C. 1786(g));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Federal Deposit Insurance Corporation ("FDIC"), the Board of Governors of the Federal Reserve System ("Board of Governors"), the Office of the Comptroller of the Currency ("OCC") or the Office of Thrift Supervision ("OTS") should issue an order to approve or disapprove a person's proposed acquisition of an institution and/or institution holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78o-5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the FDIC, the Board of Governors, the OCC or the OTS is the appropriate Agency.

(e) Assessment of civil money penalties:

(1) *By the FDIC* against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Agency for any violation of:

(i) Sections 22(h) and 23 of the Federal Reserve Act ("FRA"), or any regulation issued thereunder, and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1828(j);

(ii) Section 106(b) of the Bank Holding Company Act Amendments of 1970 ("BHCA Amendments of 1970"), and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(iii) Any provision of the Change in Bank Control Act of 1978, as amended (the "CBCA"), or any regulation or order issued thereunder, and certain unsafe or unsound practices, or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(iv) Section 7(a)(1) of the FDIA, pursuant to 12 U.S.C. 1817(a)(1);

(v) Any provision of the International Lending Supervision Act of 1983 ("ILSA"), or any rule, regulation or order

issued thereunder, pursuant to 12 U.S.C. 3909;

(vi) Any provision of the International Banking Act of 1978 ("IBA"), or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(vii) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(viii) Section 1120 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(ix) The terms of any final or temporary order issued under section 3 of the FDIA or of any written agreement executed by the FDIC, the terms of any condition imposed in writing by the FDIC in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(2) *By the Board of Governors* against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Agency for any violation of:

(i) Any provision of the Bank Holding Company Act of 1956, as amended ("BHCA"), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 1847(b) and (d);

(ii) Sections 19, 22 and 23 of the FRA, or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(iii) Section 9 of the FRA pursuant to 12 U.S.C. 324;

(iv) Section 106(b) of the BHCA Amendments of 1970 and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1972(2)(F);

(v) Any provision of the CBCA, or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(vi) Any provision of ILSA, or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(vii) Any provision of the IBA, or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(viii) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(ix) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(x) The terms of any final or temporary order issued under section 8 of the FDIA or of any written agreement executed by the Board of Governors, the terms of any condition imposed in writing by the Board of Governors in connection with the grant of an application or request, and certain unsafe or unsound practices or breaches of fiduciary duty or law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(3) *By the NCUA* against institutions and institution-affiliated parties for which it is the appropriate Agency for any violation of:

(i) Section 202 of the FCUA, pursuant to 12 U.S.C. 1782(a);

(ii) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(iii) The terms of any final or temporary order issued under section 206 of the FCUA or any written agreement executed by the NCUA, any condition imposed in writing by the NCUA in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1786(k);

(4) *By the OCC* against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Agency for any violation of:

(i) Any provision of law referenced in 12 U.S.C. 93, or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 93;

(ii) Sections 22 and 23 of the FRA, or any regulation issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

(iii) Section 106(b) of the BHCA Amendments of 1970, pursuant to 12 U.S.C. 1972(2)(f);

(iv) Any provision of the CBCA, or any regulation or order issued thereunder, and certain unsafe or unsound practices and breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(v) Any provision of ILSA, or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3909;

(vi) Any provision of the IBA, or any rule, regulation or order issued thereunder, pursuant to 12 U.S.C. 3108;

(vii) Section 5211 of the Revised Statutes (12 U.S.C. 161), pursuant to 12 U.S.C. 164;

(viii) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(ix) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(x) The terms of any final or temporary order issued under section 8 of the FDIA or any written agreement executed by the OCC, the terms of any condition imposed in writing by the OCC in connection with the grant of an application or request, certain unsafe or unsound practices, breaches of fiduciary duty, or any law or regulation not otherwise provided herein, pursuant to 12 U.S.C. 1818(i)(2); and

(5) *By the OTS* against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Agency for any violation of:

(i) Section 5 of the Home Owners' Loan Act ("HOLA") or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464 (d), (s) and (v);

(ii) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d);

(iii) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a(i) and (r);

(iv) Any provisions of the CBCA any regulation or order issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(v) Sections 22(h) and 23 of the FRA, or any regulation issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1468;

(vi) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u-2);

(vii) Section 1120 of FIRREA (12 U.S.C. 3349), or any order or regulation issued thereunder, pursuant to 12 U.S.C. 3349; and

(viii) The terms of any final or temporary order issued or enforceable pursuant to section 8 of the FDIA or of any written agreement executed by the OTS, the terms of any conditions imposed in writing by the OTS in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2).

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in each Agency's Local Rules.

§ _____.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the

singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ _____.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation

(c) *Agency* means:

(1) The FDIC in the case of a State nonmember bank (except a District bank), or a foreign bank having an insured branch;

(2) The Board of Governors in the case of any State member insured bank (except a District bank), any branch or agency of a foreign bank with respect to any provision of the FRA (12 U.S.C. 221 *et seq.*), which is made applicable under the IBA (12 U.S.C. 3101 *et seq.*), any foreign bank which does not operate as an insured branch, any agency or commercial lending company other than a Federal agency, supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the IBA (12 U.S.C. 3105(b)(1)), including such proceedings under the Depository Institutions Supervisory Act, and any bank holding company and any subsidiary of a bank holding company (other than a bank) as those terms are defined by the BHCA (12 U.S.C. 1841 *et seq.*);

(3) The NCUA in the case of any Federal credit union as defined in section 101(1) of the FCUA (12 U.S.C. 1752(1)), and any insured credit union (as defined in section 101(7) of the FCUA (12 U.S.C. 1752(7)));

(4) The OCC in the case of any national banking association, any District bank, or any Federal branch or agency of a foreign bank;

(5) The OTS in the case of any savings association or any savings and loan holding company, any subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, any service corporation of a savings association, and any subsidiary of such

service corporation, whether wholly or partly owned.

(d) *Agency Head* means:

(1) In the case of the FDIC, the Board of Directors of the FDIC, or its designee;

(2) In the case of the Board of Governors, the Board of Governors of the Federal Reserve System or its designee;

(3) In the case of the NCUA, the National Credit Union Administration Board, or its designee;

(4) In the case of the OCC, the Comptroller of the Currency or his or her designee; and

(5) In the case of the OTS, the Director of OTS or his or her designee.

(e) *Decisional employee* means any member of the Agency's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Agency or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(f) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the Agency in an adjudicatory proceeding.

(g) *Final order* means an order issued by the Agency with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(h) *Institution* includes:

(1) Any bank as that term is defined in section 3(a) of the FDIA (12 U.S.C. 1813(a));

(2) Any bank holding company or any subsidiary (other than a bank) of a bank holding company as those terms are defined in the BHCA (12 U.S.C. 1841 *et seq.*);

(3) Any Federal credit union as that term is defined in section 101(1) of the FCUA (12 U.S.C. 1752(1));

(4) Any insured state credit union as that term is defined in section 101(7) of the FCUA (12 U.S.C. 1752(7));

(5) Any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467(a));

(6) Any organization operating under section 25 of the FRA (12 U.S.C. 601 *et seq.*);

(7) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof; and

(8) Any Federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)).

(i) *Institution-affiliated party* means:

(1) Any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)); and

(2) Any institution-affiliated party as that term is defined in section 206(r) of the FCUA (12 U.S.C. 1786(r)).

(j) *Local Rules* means those rules which are promulgated by an Agency in the subparts of this part excluding subpart A and which may contain some or all of the following:

(1) Procedures for formal enforcement actions that fewer than four of the five Agencies may have the authority to issue;

(2) Procedures for informal proceedings which are not required to be conducted in accordance with the Administrative Procedure Act ("APA");

(3) Procedures which supplement the Uniform Rules in subpart A of this part; and

(4) Internal procedures for processing administrative enforcement actions and sanctions particular to each Agency.

(k) *Office of Financial Institution Adjudication* ("OFIA") means the executive body charged with overseeing the administration of administrative enforcement proceedings for the Agencies.

(l) *Party* means the Agency and any person named as a party in any notice.

(m) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (h) of this section.

(n) *Respondent* means any party other than the Agency.

(o) *Uniform Rules* means those rules in subpart A of this part that pertain to the types of formal administrative enforcement actions common to at least four of the five Agencies.

(p) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ _____.4 Authority of Agency Head.

The Agency Head may, at any time during the pendency of a proceeding perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ _____.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted

in accordance with the provisions of Chapter 5 of Title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § _____.31;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Agency Head shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) To prepare and present to the Agency Head a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ _____.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before an Agency or an administrative law judge—(1) By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the Agency if such attorney is not currently suspended or debarred from practice before the Agency.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a

member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the Agency.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Agency, shall file a notice of appearance with the OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ _____.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: The counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after

the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ _____.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § _____.6(a):

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ _____.9 Ex parte Communications.

(a) *Definition.*—(1) *Ex parte communication* means any material oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on

reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the Agency Head or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Agency Head until the date that the Agency Head issues its final decision pursuant to § _____.40(c), no party, interested person or counsel therefor shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to the Agency Head, the administrative law judge, or a decisional employee. The Agency Head, administrative law judge, or decisional employee shall not knowingly make or cause to be made to a party, or any interested person or counsel therefor, an ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, the Agency Head or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Agency Head or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ _____.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ _____.25 and .26 shall

be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Agency Head or the administrative law judge, filing may be accomplished by: (1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Agency Head or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section as to form.

(c) *Formal requirements as to papers filed.*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § _____.7.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Agency and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Agency Head, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ _____.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any

papers served by electronic media shall also concurrently be served in accordance with the requirements of § _____.10(c) as to form.

(c) *By the Agency Head or the administrative law judge.* (1) All papers required to be served by the Agency Head or the administrative law judge upon a party who has appeared in the proceeding through a counsel of record, shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding through counsel, the Agency Head or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ _____.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the

computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express Mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection;

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Agency Head or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period;

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Agency Head or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ _____.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by these uniform Rules or by any notice or order issued in the proceedings. After the referral of the case to the Agency Head pursuant to § _____.38, the Agency Head may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party or on the Agency Head's or the administrative law judge's own motion after notice and opportunity to respond is afforded all nonmoving parties.

§ _____.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Agency is the party requesting the subpoena. The Agency shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the Agency.

§ _____.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any Agency representative other than Enforcement Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ _____.16 Agency's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the Agency to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the Agency to conduct or continue any form of investigation authorized by law.

§ _____.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ _____.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1) Except for change-in-control proceedings under section 7(j)(4) of the

FDIA, 12 U.S.C. 1817(j)(4), a proceeding governed by this subpart is commenced by issuance of a notice by the Agency Head.

(ii) The notice must be served by the Agency Head upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with the OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the Agency Head.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the Agency's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the Agency is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) The answer and/or request for a hearing shall be filed with OFIA.

§ _____.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default.*—(1) *Effect of failure to answer.* Failure of a respondent to file

an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, the administrative law judge, upon motion of the Enforcement Counsel and, without further proceedings or notice to the respondent, shall file with the Agency Head a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Agency Head based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ _____.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Agency Head or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended and will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ _____.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is

deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Agency Head a recommended decision containing the findings and the relief sought in the notice.

§ _____.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ _____.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, but upon the filing of the recommended decision, motions must be filed with the Agency Head.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Agency Head, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ _____.29 and _____.30.

§ _____.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by the Local Rules of each Agency.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be

permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ _____.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by each agency's rules implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § _____.23 to revoke or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § _____.23 are waived.

(2) The party who served the request that is the subject of a motion to revoke or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § _____.23 for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ _____.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for

the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § _____.24(d). The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § _____.25(d), and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not

quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ _____.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on

any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who

fails to comply with or procures a failure to comply with, a subpoena issued under this section.

§ _____.28 Interlocutory review.

(a) *General rule.* The Agency Head may review a ruling of the administrative law judge prior to the certification of the record to the Agency Head only in accordance with the procedures set forth in this section and § _____.23.

(b) *Scope of review.* The Agency Head may exercise interlocutory review of a ruling of the administrative law judge if the Agency Head finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § _____.23. Any party may file a response to a request for interlocutory review in accordance with § _____.23(d). Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Agency Head for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Agency Head under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Agency Head.

§ _____.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Agency Head issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Filing of motions and responses.*

(1) Any party who believes that there is no genuine issue of material fact to be

determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Agency Head. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ _____.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be

addressed in the recommended decision filed at the conclusion of the hearing.

§ 31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

- (1) Simplification and clarification of the issues;
- (2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;
- (3) Matters of which official notice may be taken;
- (4) Limitation of the number of witnesses;
- (5) Summary disposition of any or all issues;
- (6) Resolution of discovery issues or disputes;
- (7) Amendments to pleadings; and
- (8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at its expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached

and any procedural determinations made.

§ 32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

- (1) Prehearing statement;
 - (2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;
 - (3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and
 - (4) Stipulation of fact, if any.
- (b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Agency, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Agency Head a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 23. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at

such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. During a hearing, such applications may be made orally on the record before the administrative law judge. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with these rules.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to § 26(c).

§ 35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ _____.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the APA and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not be deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or Agency Head shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by the appropriate Agency or state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Agency Head.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ _____.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ _____.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § _____.37(b), the administrative law judge shall file with and certify to the Agency Head for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended

findings of fact, recommended conclusions of law and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions and proposed order.

§ _____.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § _____.38, a party may file with the Agency Head written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception may be considered by the Agency Head if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception.

(2) All exceptions and briefs in support of exceptions or replies must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ _____.40 Review by Agency Head.

(a) *Notice of submission to Agency Head.* When the Agency Head determines that the record in the proceeding is complete, the Agency Head shall serve notice upon the parties that the proceeding has been submitted to the Agency Head for final decision.

(b) *Oral argument before the Agency Head.* Upon the initiative of the Agency

Head or on the written request of any party filed with the Agency Head within the time for filing exceptions, the Agency Head may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Agency Head's final decision. Oral argument before the Agency Head must be on the record.

(c) *Agency final decision.* (1) Decisional employees may advise and assist the Agency Head in the consideration and disposition of the case. The final decision of the Agency Head will be based upon review of the entire record of the proceeding, except that the Agency Head may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Agency Head shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Agency Head orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Agency Head shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Agency Head or required by statute, upon any appropriate state or Federal supervisory authority.

§ _____.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Agency may not, unless specifically ordered by the Agency Head or a reviewing court, operate as a stay of any order issued by the Agency Head. The Agency Head may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of that order.

Adoption of Proposed Uniform Rules

The Agency-specific proposals of the Uniform Rules, which appear at the end of the common preamble, appear below. Further, each Agency is proposing Local Rules to supplement the Uniform Rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Crime, Ex parte communications, Hearing procedure, Investigations, National banks, Penalties, Securities.

Authority and Issuance

For the reasons set out in the common preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations, is proposed to be amended as set forth below:

PART 19—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 19 is revised to read as follows:

Authority: 12 U.S.C. 1817, 1818, 1820 (secs. 7(j), 8 and 10 of the FDIA; 15 U.S.C. 78/ (h) and (i), 78o-4(c), 78o-5, 78q-1, 78u, 78u-2, 78u-3, 78w (secs. 12 (h) and (i), 15B(c), 15C, 17A, 21, 21B, 21C and 23 of the Securities Exchange Act of 1934); 5 U.S.C. 504, 554-557; 12 U.S.C. 504 and 505 (secs. 29 and 19(l) of the Federal Reserve Act); 12 U.S.C. 93(b) and 164 (secs. 5239 and 5213, respectively, of the Revised Statutes); 12 U.S.C. 1972 (sec. 106(b) of the Bank Holding Company Act Amendments of 1970); 12 U.S.C. 3102, 3108(a) (secs. 4 and 22(a) of the International Banking Act of 1978); 12 U.S.C. 3909 (sec. 910 of the International Lending Supervision Act of 1983); 31 U.S.C. 330.

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

- Sec.
- 19.1 Scope.
- 19.2 Rules of construction.
- 19.3 Definitions.
- 19.4 Authority of Agency Head.
- 19.5 Authority of the administrative law judge.
- 19.6 Appearance and practice in adjudicatory proceedings.
- 19.7 Good faith certification.
- 19.8 Conflicts of interest.
- 19.9 Ex parte communications.
- 19.10 Filing of papers.
- 19.11 Service of papers.
- 19.12 Construction of time limits.
- 19.13 Change of time limits.
- 19.14 Witness fees and expenses.
- 19.15 Opportunity for informal settlement.
- 19.16 Agency's right to conduct examination.
- 19.17 Collateral attacks on adjudicatory proceeding.
- 19.18 Commencement of proceeding and contents of notice.
- 19.19 Answer.

- Sec.
19.20 Amended pleadings.
19.21 Failure to appear.
19.22 Consolidation and severance of actions.
19.23 Motions.
19.24 Scope of document discovery.
19.25 Request for document discovery from parties.
19.26 Document subpoenas to nonparties.
19.27 Deposition of witness unavailable for hearing.
19.28 Interlocutory review.
19.29 Summary disposition.
19.30 Partial summary disposition.
19.31 Scheduling and prehearing conferences.
19.32 Prehearing submissions.
19.33 Public hearings.
19.34 Hearing subpoenas.
19.35 Conduct of hearings.
19.36 Evidence.
19.37 Proposed findings and conclusions.
19.38 Recommended decision and filing of record.
19.39 Exceptions to recommended decision.
19.40 Review by Agency Head.
19.41 Stays pending judicial review.

3. Subparts B through L are revised to read as follows:

Subpart B—Procedural Rules for OCC Adjudications

- Sec.
19.100 Scope.
19.101 Delegation to the Office of Financial Institution Adjudication.

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

- 19.110 Scope.
19.111 Suspension or removal.
19.112 Informal hearing.
19.113 Recommended and final decisions.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

- 19.120 Scope.
19.121 Application for exemption.
19.122 Newspaper notice.
19.123 Informal hearing.
19.124 Decision of the Comptroller.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

- 19.130 Scope.
19.131 Notice of charges and answer.
19.132 Disciplinary orders.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

- 19.140 Scope.

Subpart G—Cease-and-Desist Authority Under the Securities Laws

- 19.150 Scope.

Subpart H—Change in Bank Control

- 19.160 Scope.
19.161 Hearing request and answer.
19.162 Hearing order.

Subpart I—Discovery Depositions and Subpoenas

- 19.170 Discovery depositions.

- Sec.
19.171 Deposition subpoenas.

Subpart J—Formal Investigations

- 19.180 Scope.
19.181 Confidentiality of formal investigations.
19.182 Order to conduct a formal investigation.
19.183 Rights of witnesses.
19.184 Service of subpoena and payment of witness fees.

Subpart K—Parties and Representational Practice Before the OCC; Standards of Conduct

- 19.190 Scope.
19.191 Sanctions relating to conduct in an adjudicatory proceeding.
19.192 Censure, suspension or debarment.
19.193 Definitions.
19.194 Eligibility to practice.
19.195 Incompetence.
19.196 Disreputable conduct.
19.197 Initiation of disciplinary proceeding.
19.198 Conferences.
19.199 Proceedings under this subpart.
19.200 Effect of suspension, debarment or censure.
19.201 Petition for reinstatement.

Subpart L—Equal Access to Justice Act

- 19.210 Scope.

Subpart B—Procedural Rules for OCC Adjudications

19.100 Scope.

All materials required to be filed with or referred to the Comptroller or the administrative law judge in any proceedings under this part must be filed with the Hearing Clerk, Office of the Comptroller of the Currency, Washington, DC 20219. Filings to be made with the Hearing Clerk include the notice and answer; motions and responses to motions; briefs; the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; exceptions and requests for oral argument; and any other papers required to be filed with the Comptroller or the administrative law judge under this part.

§ 19.101 Delegation to the Office of Financial Institution Adjudication.

Unless otherwise ordered by the Comptroller, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge of the Office of Financial Institution Adjudication (OFIA).

Subpart C—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

§ 19.110 Scope.

This subpart applies to informal hearings afforded to any institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by a notice or order issued by the Comptroller.

§ 19.111 Suspension or removal.

The Comptroller may serve a notice of suspension or order of removal or prohibition on an institution-affiliated party. A copy of such notice or order will be served on the bank, whereupon the institution-affiliated party involved must immediately cease service to the bank or participation in the affairs of the bank. The notice or order will indicate the basis for suspension, removal or prohibition and will inform the institution-affiliated party of the right to request in writing, to be received by the OCC within 30 days from the date that the institution-affiliated party was served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the bank does not, or is not likely to, pose a threat to the interest of the bank's depositors or threaten to impair public confidence in the bank. The written request must be sent by certified mail to, or served personally with a signed receipt on, the District Administrator in the OCC district in which the bank in question is located, or to the Deputy Comptroller for Multinational Banking, Washington, DC, if the bank is supervised by the Multinational Banking Department. The request must state specifically the relief desired and the grounds on which that relief is based.

§ 19.112 Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall notify the petitioner requesting the hearing and the OCC's Enforcement and Compliance Division of the date, time and place fixed for the hearing. The hearing will be scheduled to be held not later than 30 days from the date when a request for hearing is received, unless the time is extended at the written request of the petitioner. The District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall extend the hearing

date only for a specific period of time and shall take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The Comptroller or the Comptroller's delegate shall appoint one or more OCC employees to preside over the hearing. The presiding official(s) shall not have been involved in the proceeding, a factually related proceeding or the underlying enforcement action in a prosecutorial or investigative role. The OCC's Enforcement and Compliance Division shall appoint an attorney to represent the OCC at the hearing.

(c) *Waiver of oral hearing.* The petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions. The petitioner must present the submissions to the presiding officer not later than ten days prior to the hearing, or within such shorter time period as the presiding officer permits, along with a signed document waiving the statutory right to appear and make oral argument.

(d) *Hearing procedures—(1) Conduct of hearing.* Hearings under this subpart are not subject to the provisions of subpart A of this part or the adjudicative provisions of the APA (5 U.S.C. 554–557).

(2) *Powers of the presiding officer.* The presiding officer shall determine all procedural issues that are governed by this subpart may permit or limit the number of witnesses and impose time limitations as he or she deems reasonable. The informal hearing will not be governed by the formal rules of evidence. All oral presentations, when permitted, and documents deemed by the presiding officer to be relevant and material to the proceeding and not unduly repetitious will be considered. The presiding officer may ask questions of any person participating in the hearing, and may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(3) *Presentation.* (i) The petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Copies of affidavits, memoranda or other written material to be presented at the hearing must be provided to the presiding officer and to the other parties in the oral argument not later than ten days prior to the hearing, or within such shorter time period as permitted by the presiding officer.

(ii) If the petitioner or the appointed OCC attorney desires to present oral testimony or witnesses at the hearing,

they must file a written request with the presiding officer not later than ten days prior to the hearing, or within a shorter time period as permitted by the presiding officer. The names of proposed witnesses should be included, along with the general nature of the expected testimony, and the reasons why oral testimony is necessary. The presiding officer generally will not admit oral testimony or witnesses unless a specific and compelling need is demonstrated. Witnesses, if admitted, shall be sworn.

(iii) In deciding on any suspension, the presiding officer shall not consider the ultimate question of the guilt or innocence of the individual with respect to the criminal charges which are outstanding. In deciding on any removal, the presiding officer shall not consider challenges to or efforts to impeach the validity of the conviction. The presiding officer may consider facts in either situation, however, which show the nature of the events on which the indictment or conviction was based.

(4) *Record.* A verbatim transcript of the proceedings may be taken if the petitioner requests a transcript and agrees to pay all expenses, or if the presiding officer determines that the nature of the case warrants a transcript. The presiding officer may order the record to be kept open for a reasonable period following the hearing, not to exceed five business days, to permit the petitioner or the appointed OCC attorney to submit additional documents for the record. Thereafter, no further submissions may be accepted except for good cause shown.

§ 19.113 Recommended and final decisions.

(a) The presiding officer shall issue a recommended decision to the Comptroller and shall serve promptly a copy of the decision on the parties to the proceeding. The decision shall include a summary of the facts and arguments of the parties. Within ten days of service, parties may submit to the Comptroller comments on the presiding officer's recommended decision.

(b) Within 60 days following the hearing or receipt of the petitioner's written submission, the Comptroller shall notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank, will be affirmed, terminated or modified. The Comptroller's decision must include a statement of reasons supporting the decision. The Comptroller's decision is a final and unappealable order.

(c) A finding of not guilty or other disposition of the charge on which a

notice of suspension was based does not preclude the Comptroller from thereafter instituting removal proceedings pursuant to section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) and subpart A of this part.

(d) A removal or prohibition by order remains in effect until terminated by the Comptroller. A suspension or prohibition by notice remains in effect until the criminal charge is disposed of or until terminated by the Comptroller.

(e) A suspended or removed individual may petition the Comptroller to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. The petition must state specifically the relief sought and the grounds therefor, and may be accompanied by a supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

Subpart D—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

§ 19.120 Scope.

The rules in this subpart apply to informal hearings that may be held by the Comptroller to determine whether, pursuant to authority in sections 12(h) and (i) of the Exchange Act (15 U.S.C. 78j(h) and (i)), to exempt in whole or in part an issuer or a class of issuers from the provisions of section 12(g), or from section 13 or 14 of the Exchange Act (15 U.S.C. 78j(g), 78m or 78n), or whether to exempt from section 16 of the Exchange Act (15 U.S.C. 78p) any officer, director, or beneficial owner of securities of an issuer. The only issuers covered by this subpart are banks whose securities are registered pursuant to section 12(g) of the Exchange Act (15 U.S.C. 78j(g)). The Comptroller may deny an application for exemption without a hearing.

§ 19.121 Application for exemption.

An issuer or an individual (officer, director or shareholder) may submit a written application for an exemption order to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. The application must specify the type of exemption sought and the reasons therefor, including an explanation of why an exemption would not be inconsistent with the public interest or the protection of investors. The Securities and Corporate Practices Division shall

inform the applicant in writing whether a hearing will be held to consider the matter.

§ 19.122 Newspaper notice.

Upon being informed that an application will be considered at a hearing, the applicant shall publish a notice one time in a newspaper of general circulation in the community where the issuer's main office is located. The notice must state: The name and title of any individual applicants; the type of exemption sought; the fact that a hearing will be held; and a statement that interested persons may submit to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, within 30 days from the date of the newspaper notice, written comments concerning the application and a written request for an opportunity to be heard. The applicant shall promptly furnish a copy of the notice to the Securities and Corporate Practices Division, and to bank shareholders.

§ 19.123 Informal hearing.

(a) *Conduct of proceeding.* The adjudicative provisions of the APA (5 U.S.C. 554-557), formal rules of evidence and subpart A of this part do not apply to hearings conducted under this subpart.

(b) *Notice of hearing.* Following the comment period, the Comptroller shall send a notice which fixes a date, time and place for hearing to each applicant and to any person who has requested an opportunity to be heard.

(c) *Presiding officer.* The Comptroller shall designate a presiding officer to conduct the hearing. The presiding officer shall determine all procedural questions not governed by this subpart, and may limit the number of witnesses and impose time and presentation limitations as are deemed reasonable. At the conclusion of the informal hearing, the presiding officer shall issue a recommended decision to the Comptroller as to whether the exemption should issue. The decision shall include a summary of the facts and arguments of the parties.

(d) *Attendance.* The applicant and any person who has requested an opportunity to be heard may attend the hearing, with or without counsel. The hearing shall be open to the public. In addition, the applicant and any other hearing participant may introduce oral testimony through such witnesses as the presiding officer shall permit.

(e) *Order of presentation.* (1) The applicant may present an opening statement of a length decided by the presiding officer. Then each of the

hearing participants, or one among them selected with the approval of the presiding officer, may present an opening statement. The opening statement should summarize concisely what the applicant and each participant intends to show.

(2) The applicant shall have an opportunity to make an oral presentation of facts and materials or submit written materials for the record. One or more of the hearing participants may make an oral presentation or a written submission.

(3) After the above presentations, the applicant, followed by one or more of the hearing participants, may make concise summary statements reviewing their position.

(f) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties afforded the hearing. All witnesses shall be present on their own volition, but any person appearing as a witness may be questioned by each applicant, any hearing participant, and the presiding officer. Witnesses shall be sworn unless otherwise directed by the presiding officer.

(g) *Evidence.* The presiding officer may exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence do not apply. Documentary material must be of a size consistent with ease of handling and filing. The presiding officer may determine the number of copies that must be furnished for purposes of the hearing.

(h) *Transcript.* A transcript of each proceeding will be arranged by the OCC, with all expenses, including the furnishing of a copy to the presiding officer, being borne by the applicant.

§ 19.124 Decision of the Comptroller.

Following the conclusion of the hearing and the submission of the record and the presiding officer's recommended decision to the Comptroller for decision, the Comptroller or the Comptroller's delegate shall notify the applicant and all persons who have so requested in writing of the final disposition of the application. Exemptions granted must be in the form of an order which specifies the type of exemption granted and its terms and conditions.

Subpart E—Disciplinary Proceedings Involving the Federal Securities Laws

§ 19.130 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 15B(c)(5), 15C(c)(2)(A), 17A(c)(3), and 17A(c)(4)(C)

of the Exchange Act (15 U.S.C. 78o-4(c)(5), 78o-5(c)(2)(A), 78q-1(c)(3)(A), and 78q-1(c)(4)(C)), to take disciplinary action against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) In addition to the issuance of disciplinary orders after opportunity for hearing, the Comptroller or the Comptroller's delegate may issue and serve any notices and temporary or permanent cease-and-desist orders and take any actions that are authorized by section 8 of the FDIA (12 U.S.C. 1818), sections 15B(c)(5), 15C(c)(2)(B), and 17A(d)(2) of the Exchange Act, and other subparts of this part against the following:

(1) The parties listed in paragraph (a) of this section; and

(2) A bank which is a clearing agency.

(c) Nothing in this part impairs the powers conferred on the Comptroller by other provisions of law.

§ 19.131 Notice of charges and answer.

(a) Proceedings are commenced when the Comptroller serves a notice of charges on a bank or associated person. The notice must indicate the type of disciplinary action being contemplated and the grounds therefor, and fix a date, time and place for hearing. The hearing must be set for a date at least 30 days after service of the notice. A party served with a notice of charges may file an answer as prescribed in § 19.19. Any party who fails to appear at a hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of a disciplinary order.

(b) All proceedings under this subpart must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(b), a request for a private hearing may be filed within 20 days of service of the notice.

§ 19.132 Disciplinary orders.

(a) In the event of consent, or if on the record filed by the presiding officer, the Comptroller finds that any act or omission or violation specified in the notice of charges has been established,

the Comptroller or the Comptroller's delegate may serve on the bank or persons concerned a disciplinary order, as provided in the Exchange Act. The order may:

(1) Censure, limit the activities, functions or operations, or suspend or revoke the registration of a bank which is a municipal securities dealer;

(2) Censure, suspend or bar any person associated or seeking to become associated with a municipal securities dealer;

(3) Censure, limit the activities, functions or operations, or suspend or bar a bank which is a government securities broker or dealer;

(4) Censure, limit the activities, functions or operations, or suspend or bar any person associated with a government securities broker or dealer;

(5) Deny registration to, limit the activities, functions, or operations or suspend or revoke the registration of a bank which is a transfer agent; or

(6) Censure or limit the activities or functions, or suspend or bar, any person associated or seeking to become associated with a transfer agent.

(b) A disciplinary order is effective when served on the party or parties involved and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart F—Civil Money Penalty Authority Under the Securities Laws

§ 19.140 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in section 21B of the Exchange Act (15 U.S.C. 78u-2), in proceedings commenced pursuant to sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o-4, 78o-5, or 78q-1) for which the OCC is the appropriate regulatory agency under section 3(a)(34) of the Exchange Act (15 U.S.C. 78c(a)(34)), the Comptroller may impose a civil money penalty against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) All proceedings under this subpart must be commenced, and the notice of assessment must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(b), a request for a private hearing may be filed within 20 days of service of the notice.

Subpart G—Cease-and-Desist Authority Under the Securities Laws

§ 19.150 Scope.

(a) Except as provided in this subpart, subpart A of this part applies to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 12(i) and 21C of the Exchange Act (15 U.S.C. 78l(i) and 78u-3), the Comptroller may initiate cease-and-desist proceedings against a national bank for violations of sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act or regulations or rules issued thereunder (15 U.S.C. 78l, 78m, 78n(a), 78n(c), 78n(d), 78n(f), and 78p).

(b) All proceedings under this subpart must be commenced, and the notice of charges must be filed, on a public basis, unless otherwise ordered by the Comptroller. Pursuant to § 19.33(b), a request for a private hearing may be filed within 20 days of service of the notice.

Subpart H—Change in Bank Control

§ 19.260 Scope.

(a) Section 7(j) of the FDIA (12 U.S.C. 1817(j)) provides that no person may acquire control of an insured depository institution unless the appropriate Federal bank regulatory agency has been given prior written notice of the proposed acquisition. If, after investigating and soliciting comment on the proposed acquisition, the agency decides that the acquisition should be disapproved, the agency shall notify the acquiring party in writing within three days of the decision. The party can then request an agency hearing on the proposed acquisition. The OCC's procedures for reviewing notices of proposed acquisitions in change-in-control proceedings are set forth at 12 CFR 5.50.

(b) Unless otherwise provided in this subpart, the rules in subpart A of this part set forth the procedures applicable to requests for OCC hearings.

§ 19.161 Hearing request and answer.

(a) *Hearing request.* (1) The OCC's written disapproval of a proposed acquisition of control of a national bank, must—

- (i) Contain a statement of the basis for the disapproval; and
- (ii) Indicate that—

(A) A hearing may be requested by filing a written request with the Comptroller within ten days after service of the notice of disapproval; and

(B) If a hearing is requested, that an answer to the notice of disapproval must be filed within 20 days after service of the notice of disapproval.

(b) *Answer.* An answer to the notice of disapproval must specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice which are not specifically denied are deemed admitted by the applicant. Any hearing under this subpart shall be limited to those parts of the notice that are specifically denied.

(c) *Waiver of hearing.* Failure to request a hearing pursuant to this section or to file an answer constitutes a waiver of the opportunity for a hearing, and the notice of disapproval constitutes a final and unappealable order.

§ 19.162 Hearing order.

Upon receipt of a request for hearing and an answer pursuant to § 19.161, the Comptroller or the Comptroller's designee shall issue an order setting forth the legal authority for the OCC's jurisdiction over the proceeding and shall address the request for hearing.

Subpart I—Discovery Depositions and Subpoenas

§ 19.170 Discovery depositions.

(a) *General rule.* A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant, and material to the proceeding, and where there is need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition, and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness shall be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant, and material matters of which the witness has factual, direct, and personal knowledge. Objections to questions or exhibits shall

be in short form, stating the grounds for the objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, irrelevant, or immaterial matters;

(3) Involves unwarranted attempts to pry into a party's preparation for trial; or

(4) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the witness.

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

§ 19.171 Deposition subpoenas.

(a) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(b) *Service.* The party requesting the subpoena shall serve it on the person named therein, or on that person's counsel, by personal service, certified mail, or overnight delivery service. The party serving the subpoena shall file proof of service with the administrative law judge.

(c) *Motion to quash.* A person named in a subpoena may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party which requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days

after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(d) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 19.27(d).

Subpart J—Formal Investigations

§ 19.180 Scope.

This subpart and § 19.8 apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate and pertain to the exercise of powers specified in 12 U.S.C. 481, 1818(n) and 1820(c), and section 21 of the Exchange Act (15 U.S.C. 78u). This subpart does not restrict or in any way affect the authority of the Comptroller to conduct examinations into the affairs or ownership of banks and their affiliates.

§ 19.181 Confidentiality of formal investigations.

Information or documents obtained in the course of a formal investigation are confidential and may be disclosed only in accordance with the provisions of part 4 of this chapter.

§ 19.182 Order to conduct a formal investigation.

A formal investigation begins with the issuance of an order signed by the Comptroller or the Comptroller's delegate. The order must designate the person or persons who will conduct the investigation. Such persons are authorized, among other things, to issue subpoenas duces tecum, to administer oaths, and receive affirmations as to any matter under investigation by the Comptroller. Upon application and for good cause shown, the Comptroller may limit, modify, or withdraw the order at any stage of the proceedings.

§ 19.183 Rights of witnesses.

(a) Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall, on request, be shown the order initiating the investigation.

(b) Any person who, in a formal investigation, is compelled to appear and testify, or who appears and testifies by request or permission of the Comptroller, may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel means the right of a person testifying to have an attorney present at all times while testifying and to have the attorney—

(1) Advise the person before, during and after the conclusion of testimony;

(2) Question the person briefly at the conclusion of testimony to clarify any of the answers given; and

(3) Make summary notes during the testimony solely for the use of the person.

(c) Any person who has given or will give testimony and counsel representing the person may be excluded from the proceedings during the taking of testimony of any other witness.

(d) Any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the Comptroller's representatives conducting the proceedings have cause to believe that the contents should not be disclosed pending completion of the investigation.

(e) Any designated representative conducting an investigative proceeding shall report to the Comptroller any instances where a person has been guilty of dilatory, obstructionist or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. The Comptroller may take such action as the circumstances warrant, including exclusion of the offending individual or individuals from participation in the proceedings.

§ 19.184 Service of subpoena and payment of witness fees.

A subpoena may be served on the person named therein, or such person's attorney, by personal service or certified mail. A witness who is subpoenaed will be paid the same expenses in the same manner as witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Subpart K—Parties and Representational Practice Before the OCC; Standards of Conduct

§ 19.190 Scope.

This subpart contains rules relating to parties and representational practice before the OCC. These rules include the imposition of sanctions by the administrative law judge, any other presiding officer, or the Comptroller against parties or their counsel in an adjudicatory proceeding under this part. They also cover other disciplinary sanctions—censure, suspension or debarment—against individuals who appear before the OCC in a representational capacity either in an adjudicatory proceeding under this part or in any other matters connected with

presentations to the OCC relating to a client's rights, privileges, or liabilities. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the OCC are not subject to disciplinary proceedings under this subpart.

§ 19.191 Sanctions relating to conduct in an adjudicatory proceeding.

(a) *General rule.* Appropriate sanctions may be imposed when any party or person representing a party in an adjudicatory proceeding under this part has failed to comply with an applicable statute, regulation, or order, and that failure to comply:

(1) Constitutes contemptuous conduct;

(2) Materially injures or prejudices another party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Unduly delays the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) Upon the motion of any party, or on his or her own motion, the administrative law judge or other presiding officer may impose sanctions in accordance with this section. The administrative law judge or other presiding officer shall submit to the Comptroller for final ruling any sanction entering a final order that determines the case on the merits.

(2) No sanction authorized by this section, other than refusal to accept late filings, shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form as the administrative law judge or other presiding officer directs. The administrative law judge or other

presiding officer may limit the opportunity to be heard to an opportunity of a party or a party's representative to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge or other presiding officer.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, are subject to interlocutory review pursuant to § 19.25 in the same manner as any other ruling.

(d) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or other presiding officer or the Comptroller from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 19.192 Censure, suspension or debarment.

The Comptroller may censure an individual or suspend or debar such individual from practice before the OCC if he or she is incompetent in representing a client's rights or interest in a significant matter before the OCC; or engages, or has engaged, in disreputable conduct; or refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual may be initiated only upon a finding by the Comptroller that the basis for the disciplinary action is sufficiently egregious.

§ 19.193 Definitions.

As used in §§ 19.190 through 19.201, the following terms shall have the meaning given in this section unless the context otherwise requires:

(a)(1) *Practice before the OCC* includes any matters connected with presentations to the OCC or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the OCC. Such matters include, but are not limited to, representation of a client in an adjudicatory proceeding under this part; the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the OCC, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the OCC on behalf of another person.

(2) *Practice before the OCC* does not include work prepared for a bank solely at its request for use in the ordinary course of its business.

(b) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, of the United States or the District of Columbia.

(c) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth of the United States, or the District of Columbia.

§ 19.194 Eligibility to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the OCC.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the OCC may practice before the OCC.

§ 19.195 Incompetence.

Incompetence in the representation of a client's rights and interests in a significant matter before the OCC is grounds for suspension or debarment. The term "incompetence" encompasses conduct that reflects a lack of the knowledge, judgment and skill that a professional would ordinarily and reasonably be expected to exercise in adequately representing the rights and interests of a client. Such conduct includes, but is not limited to:

(a) Handling a matter which the individual knows or should know that he or she is not competent to handle, without associating with a professional who is competent to handle such matter.

(b) Handling a matter without adequate preparation under the circumstances.

(c) Neglect in a matter entrusted to him or her.

§ 19.196 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred or suspended from practice before the OCC includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking or applicable securities laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust.

(b) Knowingly giving false or misleading information, or participating

in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement.

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the OCC by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, or commonwealth of the United States, or the District of Columbia for the conviction of a felony or misdemeanor involving moral turpitude in matters relating to the supervisory responsibilities of the OCC, where the conviction has not been reversed on appeal.

(e) Knowingly aiding or abetting another individual to practice before the OCC during that individual's period of suspension, debarment, or ineligibility.

(f) Contemptuous conduct in connection with practice before the OCC, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter.

(g) Suspension or debarment from practice before the Board of Governors, the FDIC, the OTS, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal agency based on matters relating to the supervisory responsibilities of the OCC.

(h) Willful violation of any of the regulations contained in this part.

§ 19.197 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the OCC, who has reason to believe that an individual practicing before the OCC in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 19.192, may make a report thereof and forward it to the OCC or to such person as may be delegated

responsibility for such matters by the Comptroller.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the OCC, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Comptroller or the Comptroller's delegate has reason to believe that any individual who practices before the OCC in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 19.192, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding will be conducted pursuant to § 19.199 and initiated by a complaint which names the individual as a respondent and is signed by the Comptroller or the Comptroller's delegate. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section may not be commenced until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the commencement of the proceeding.

§ 19.198 Conferences.

(a) *General.* The Comptroller or the Comptroller's delegate may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been commenced. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the OCC may consent to suspension from practice. At the discretion of the Comptroller or the Comptroller's delegate, the individual may be suspended or debarred in accordance with the consent offered.

§ 19.199 Proceedings under this subpart.

Any hearing held under this subpart are held before a presiding officer who is an administrative law judge pursuant to procedures set forth in subpart A of this part. The Comptroller or the Comptroller's delegate shall appoint a person to represent the OCC in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding is disqualified from representing the OCC in the hearing. The hearing will be closed to the public unless the Comptroller on his or her own initiative, or on the request of a party, otherwise directs. The presiding officer shall issue a recommended decision to the Comptroller who shall issue the final decision and order. The Comptroller may censure, debar or suspend an individual, or take such other disciplinary action as the Comptroller deems appropriate.

§ 19.200 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual may not practice before the OCC unless otherwise permitted to do so by the Comptroller.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual may not practice before the OCC during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the individual may be permitted to practice before the OCC, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the OCC's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Comptroller or the Comptroller's delegate shall give notice of the order to appropriate officers and employees of the OCC and to interested departments and agencies of the Federal Government. The Comptroller or the Comptroller's delegate shall also give notice to the appropriate authorities of the state in which any debarred or suspended individual is or was licensed to practice.

§ 19.201 Petition for reinstatement.

At the expiration of the period of time designated in the order of debarment, the Comptroller may entertain a petition for reinstatement from any person debarred from practice before the OCC. The Comptroller may grant

reinstatement only if satisfied that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Comptroller, in his or her discretion, affords the petitioner a hearing.

Subpart L—Equal Access to Justice Act

§ 19.210 Scope.

The Equal Access to Justice Act regulations applicable to formal OCC adjudicatory proceedings under this part are set forth at 31 CFR part 6.

4. Subparts M through O are removed.

Dated: June 5, 1991.

Robert B. Serino,
Deputy Chief Counsel (Policy).

FEDERAL RESERVE SYSTEM

12 CFR Part 263

List of Subjects in 12 CFR Part 263

Administrative practice and procedure; Banks, banking; Equal access to justice; Federal Reserve System; Hearing and appeal procedures; Penalties.

Authority and Issuance

For the reasons set out in the common preamble, part 263 of chapter II of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for part 263 is revised to read as follows:

Authority: Sections 9, 11(j), 19 and 29 of the Federal Reserve Act (12 U.S.C. 324, 248, 504, and 505); sections 5(b), 8(b) and 8(d) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1884(b), 1847(b) and 1847(d)); section 106(b)(2)(F) of the Bank Holding Company Act Amendments of 1970, as amended (12 U.S.C. 1972(2)(F)); sections 7(j), 8 and 18(c) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1817(j), 1818 and 2828(c)); section 13 of the International Banking Act of 1978 (12 U.S.C. 308); sections 15B(c)(5), 15C(c)(2), and 21B of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o-4, 78o-5, and 78u-2); section 11 of the Clayton Act, as amended (15 U.S.C. 21); section 203(c) of the Equal Access to Justice Act, as amended (5 U.S.C. 504); and sections 908 and 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3907 and 3909).

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

- Sec.
- 263.1 Scope.
- 263.2 Rules of construction.
- 263.3 Definitions.
- 263.4 Authority of Agency Head.
- 263.5 Authority of the administrative law judge.
- 263.6 Appearance and practice in adjudicatory proceedings.
- 263.7 Good faith certification.
- 263.8 Conflicts of interest.
- 263.9 Ex parte communications.
- 263.10 Filing of papers.
- 263.11 Service of papers.
- 263.12 Construction of time limits.
- 263.13 Change of time limits.
- 263.14 Witness fees and expenses.
- 263.15 Opportunity for informal settlement.
- 263.16 Agency's right to conduct examination.
- 263.17 Collateral attacks on adjudicatory proceeding.
- 263.18 Commencement of proceeding and contents of notice.
- 263.19 Answer.
- 263.20 Amended pleadings.
- 263.21 Failure to appear.
- 263.22 Consolidation and severance of actions.
- 263.23 Motions.
- 263.24 Scope of document discovery.
- 263.25 Request for document discovery from parties.
- 263.26 Document subpoenas to nonparties.
- 263.27 Deposition of witness unavailable for hearing.
- 263.28 Interlocutory review.
- 263.29 Summary disposition.
- 263.30 Partial summary disposition.
- 263.31 Scheduling and prehearing conferences.
- 263.32 Prehearing submissions.
- 263.33 Public hearings.
- 263.34 Hearing subpoenas.
- 263.35 Conduct of hearings.
- 263.36 Evidence.
- 263.37 Proposed findings and conclusions.
- 263.38 Recommended decision and filing of record.
- 263.39 Exceptions to recommended decision.
- 263.40 Review by Agency Head.
- 263.41 Stays pending judicial review.

3. Subparts B through D are revised and new subparts E through G are added to read as follows:

Subpart B—Board of Governors Local Rules Supplementing the Uniform Rules

- 263.50 Purpose and scope.
- 263.51 Definitions.
- 263.52 Address for filing.
- 263.53 Discovery depositions.
- 263.54 Delegation to the Office of Financial Institution Adjudication.

Subpart C—Procedures for Assessment of Civil Money Penalties

- 263.60 Scope.
- 263.61 Opportunity for informal proceeding.
- 263.62 Relevant considerations for assessment of civil penalty.
- 263.63 Assessment order.

Sec.

- 263.64 Payment of civil penalty

Subpart D—Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony Is Charged or Proven

- 263.70 Purpose and scope.
- 263.71 Notice of order of suspension, removal, or prohibition.
- 263.72 Request for informal hearing.
- 263.73 Order for informal hearing.
- 263.74 Decision of the Board.

Subpart E—Procedures for Issuance and Enforcement of Directives To Maintain Adequate Capital

- 263.80 Purpose and scope.
- 263.81 Definitions.
- 263.82 Establishment of minimum capital levels.
- 263.83 Issuance of capital directives.
- 263.84 Enforcement of directive.
- 263.85 Establishment of increased capital level for specific institutions.

Subpart F—Practice Before the Board

- 263.90 Scope.
- 263.91 Censure, suspension or debarment.
- 263.92 Definitions.
- 263.93 Eligibility to practice.
- 263.94 Conduct warranting sanctions.
- 263.95 Initiation of disciplinary proceeding.
- 263.96 Conferences.
- 263.97 Proceedings under this subpart.
- 263.98 Effect of suspension, debarment or censure.
- 263.99 Petition for reinstatement.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

- 263.100 Authority and scope.
- 263.101 Standards for awards.
- 263.102 Prevailing party.
- 263.103 Eligibility of applicants.
- 263.104 Application for awards.
- 263.105 Statement of net worth.
- 263.106 Measure of awards.
- 263.107 Statement of fees and expenses.
- 263.108 Responses to application.
- 263.109 Further proceedings.
- 263.110 Recommended decision.
- 263.111 Action by the Board.

Subpart B—Board of Governors Local Rules Supplementing the Uniform Rules

§ 263.50 Purpose and scope.

(a) This subpart prescribes the rules of practice and procedure governing formal adjudications set forth in § 263.50(b) of this subpart, and supplements the rules of practice and procedure contained in subpart A of this part.

(b) The rules and procedures of this subpart and subpart A of this part shall apply to the formal adjudications set forth in § 263.1 of subpart A and to the following adjudications:

(1) Suspension of a member bank from use of credit facilities of the Federal Reserve System under section 4 of the FRA (12 U.S.C. 301);

(2) Termination of a bank's membership in the Federal Reserve System under section 9 of the FRA (12 U.S.C. 327);

(3) Issuance of a cease-and-desist order under section 11 of the Clayton Act (15 U.S.C. 21);

(4) Formal adjudications on bank merger applications under section 18(c) of the FDIA (12 U.S.C. 1828(c));

(5) Issuance of a divestiture order under section 5(e) of the BHCA (12 U.S.C. 1844(e));

(6) Imposition of sanctions upon any municipal securities dealer for which the Board is the appropriate regulatory agency, or upon any person associated or seeking to become associated with such a municipal securities dealer, under section 15B(c)(5) of the Exchange Act (15 U.S.C. 78o-4); and

(7) Proceedings where the Board otherwise orders that a formal hearing be held.

§ 263.51 Definitions.

As used in subparts B through G of this part:

(a) *Board* means the Board of Governors of the Federal Reserve System;

(b) *Secretary* means the Secretary of the Board of Governors of the Federal Reserve System.

§ 263.52 Address for filing.

All papers to be filed with the Board shall be filed with the Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551.

§ 263.53 Discovery depositions.

(a) *In general.* In addition to the discovery permitted in subpart A of this part, limited discovery by means of depositions shall be allowed for certain individuals with knowledge of facts material to the proceeding that are not protected from discovery by any applicable privilege. In the ordinary case, accordingly, depositions will not be taken of individuals other than those identified as hearing witnesses or experts. All discovery depositions must be completed within the time set forth in § 263.24(d).

(b) *Application.* A party who desires to take a deposition of any other party's proposed witnesses or any expert, shall apply to the administrative law judge for the issuance of a discovery subpoena or subpoena duces tecum. The application shall state: The name and address of the proposed deponent, the subject matter of the testimony expected from the deponent and its relevancy to the proceeding, and the address of the place and the time, no sooner than ten days after the service of the subpoena, for the

taking of the deposition. Any such application shall be treated as a motion subject to the rules governing motions practice set forth in § 263.23.

(c) *Issuance of subpoena.* The administrative law judge shall issue the requested deposition subpoena or subpoena duces tecum upon a finding that the application satisfies the requirements of this section and § 263.24. If the administrative law judge determines that the taking of the deposition or its proposed location is, in whole or in part, unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome, he or she may deny the application or may grant it upon such conditions as justice may require. The party obtaining the deposition subpoena or subpoena duces tecum shall be responsible for serving it on the deponent and all parties to the proceeding in accordance with § 263.11.

(d) *Motion to quash or modify.* A person named in a deposition subpoena or subpoena duces tecum may file a motion to quash or modify the subpoena, including the issuance of a protective order, within at least ten days after service of the subpoena, but in all cases at least five days prior to the commencement of the scheduled deposition. A statement of the reasons for granting the motion must accompany it and a copy of the motion and the statement must be served on party which requested the subpoena. Only the party requesting the subpoena may file a response to a motion to quash or modify, and such response shall be filed within five days of service of the motion.

(e) *Enforcement of a deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures set forth in § 263.27(d).

(f) *Conduct of the deposition.* The deponent shall be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant and material matters. Objections to questions or evidence shall be in the short form, stating the ground for the objection. Failure to object to questions or evidence shall not be deemed a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The discovery deposition shall be transcribed or otherwise recorded as agreed among the parties.

(g) *Protective orders.* At any time during the taking of a discovery deposition, on the motion of any party or of the deponent, the administrative law judge may terminate or limit the scope and manner of the deposition upon a finding of sufficient ground. Grounds for terminating or limiting the

taking of a discovery deposition include a finding that the discovery deposition is being conducted in bad faith or in such a manner as to:

- (1) Unreasonably annoy, embarrass, or oppress the deponent;
- (2) Unreasonably probe into privilege, irrelevant or immaterial matters; or
- (3) Unreasonably attempt to pry into a party's preparation for trial.

§ 263.54 Delegation to the Office of Financial Institution Adjudication.

Unless otherwise ordered by the Board, administrative adjudications subject to subpart A of this part shall be conducted by an administrative law judge of the OFIA.

Subpart C—Procedures for Assessment of Civil Money Penalties

§ 263.60 Scope.

The Uniform Rules set forth in subpart A of this part shall govern the procedures for assessment of civil money penalties, except as otherwise provided in this subpart.

§ 263.61 Opportunity for informal proceeding.

In the sole discretion of the Board's General Counsel, the General Counsel may, prior to the issuance by the Board of a notice of assessment of civil penalty, advise the affected person that the issuance of a notice of assessment of civil penalty is being considered and the reasons and authority for the proposed¹ assessment. The General Counsel may provide the person an opportunity to present written materials or request a conference with members of the Board's staff to show that the penalty should not be assessed or, if assessed, should be reduced in amount.

§ 263.62 Relevant considerations for assessment of civil penalty.

In determining the amount of the penalty to be assessed, the Board shall take into account the appropriateness of the penalty with respect to the financial resources and good faith of the person charged, the gravity of the misconduct, the history of previous misconduct, the economic benefit derived by the person from the misconduct, and such other matters as justice may require.

§ 263.63 Assessment order.

(a) In the event of consent to an assessment by the person concerned, or if, upon the record made at an administrative hearing, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue a final order of assessment of civil penalty. In its final

order, the Board may modify the amount of the penalty specified in the notice of assessment.

(b) An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

§ 263.64 Payment of civil penalty.

(a) The date designated in the notice of assessment for payment of the civil penalty will normally be 60 days from the issuance of the notice. If, however, the Board finds in a specific case that the purposes of the authorizing statute would be better served if the 60-day period is changed, the Board may shorten or lengthen the period or make the civil penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of civil penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil penalty should be paid or collected.

(b) Checks in payment of civil penalties should be made payable to the "Board of Governors of the Federal Reserve System." Upon collection, the Board shall forward the amount of the penalty to the Treasury of the United States.

Subpart D— Rules and Procedures Applicable to Suspension or Removal of an Institution-Affiliated Party Where a Felony is Charged or Proven

§ 263.70 Purpose and scope.

The rules and procedures set forth in this subpart apply to informal hearings afforded to any institution-affiliated party for whom the Board is the appropriate regulatory agency, who has been suspended from office or prohibited from further participation in any manner in the conduct of the institution's affairs by a notice or order issued by the Board upon the grounds set forth in section 8(g) of the FDIA (12 U.S.C. 1818(g)).

§ 263.71 Notice or order of suspension, removal, or prohibition.

(a) *Grounds.* The Board may suspend an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is charged in any information, indictment, or complaint authorized by a United States attorney

with the commission of, or participation in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under State or Federal law. The Board may remove an institution-affiliated party from office or prohibit an institution-affiliated party from further participation in any manner in the conduct of an institution's affairs when the person is convicted of such an offense and the conviction is not subject to further direct appellate review. The Board may suspend or remove an institution-affiliated party or prohibit an institution-affiliated party from participation in an institution's affairs in these circumstances if the Board finds that continued service to the financial institution or participation in its affairs by the institution-affiliated party may pose a threat to the interests of the institution's depositors or may threaten to impair public confidence in the financial institution.

(b) *Contents.* The Board commences a suspension, removal, or prohibition action under this subpart with the issuance, and service upon a institution-affiliated party, of a notice of suspension from office, or order of removal from office, or notice or order of prohibition from participation in the financial institution's affairs. Such a notice or order shall indicate the basis for the suspension, removal, or prohibition and shall inform the institution-affiliated party of the right to request in writing, within 30 days of service of the notice or order, an opportunity to show at an informal hearing that continued service to, or participation in the conduct of the affairs of, the financial institution does not and is not likely to pose a threat to the interests of the financial institution's depositors or threaten to impair public confidence in the financial institution. Failure to file a timely request for an informal hearing shall be deemed to be a waiver of the right to request such a hearing. A notice of suspension or prohibition shall remain in effect until the criminal charge upon which the notice is based is finally disposed of or until the notice is terminated by the Board.

(c) *Service.* The notice or order shall be served upon the financial institution concerned, whereupon the institution-affiliated party shall immediately cease service to the financial institution or further participation in any manner in the conduct of the affairs of the financial institution. A notice or order of suspension, removal, or prohibition may be served by any of the means authorized for service under § 263.11(c)(2) of subpart A.

§ 263.72 Request for informal hearing.

An institution-affiliated party who is suspended or removed from office or prohibited from participation in the institution's affairs may request an informal hearing within 30 days of service of the notice or order. The request shall be filed in writing with the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall state with particularity the relief desired and the grounds therefor and shall include, when available, supporting evidence in the form of affidavits. If the institution-affiliated party desires to present oral testimony or witnesses at the hearing, the institution-affiliated party must include a request to do so with the request for informal hearing. The request to present oral testimony or witnesses shall specify the names of the witnesses and the general nature of their expected testimony.

§ 263.73 Order for informal hearing.

(a) *Issuance of hearing order.* Upon receipt of a timely request for an informal hearing, the Secretary shall promptly issue an order directing an informal hearing to commence within 30 days of the receipt of the request. At the request of the institution-affiliated party, the Secretary may order the hearing to commence at a time more than 30 days after the receipt of the request for hearing. The hearing shall be held in Washington, DC, or at such other place as may be designated by the Secretary, before presiding officers designated by the Secretary to conduct the hearing. The presiding officers normally will include representatives from the Board's Legal Division and the Division of Banking Supervision and Regulation and from the appropriate Federal Reserve Bank.

(b) *Waiver of oral hearing.* A institution-affiliated party may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Board solely on the basis of written submissions.

(c) *Hearing procedures.* (1) The institution-affiliated party may appear at the hearing personally, through counsel, or personally with counsel. The institution-affiliated party shall have the right to introduce relevant written materials and to present an oral argument. The institution-affiliated party may introduce oral testimony and present witnesses only if expressly authorized by the Board or the Secretary. Except as provided in § 263.11, the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and of subpart A of this

part shall not apply to the informal hearing ordered under this subpart unless the Board orders that subpart A of this part applies.

(2) The informal hearing shall be recorded and a transcript shall be furnished to the institution-affiliated party upon request and after the payment of the cost thereof. Witnesses need not be sworn, unless specifically requested by a party or the presiding officers. The presiding officers may ask questions of any witness.

(3) The presiding officers may order the record to be kept open for a reasonable period following the hearing (normally five business days), during which time additional submissions to the record may be made. Thereafter, the record shall be closed.

(d) *Authority of presiding officers.* In the course of or in connection with any proceeding under this subpart, the Board or the presiding officers are authorized to administer oaths and affirmations, to take or cause to be taken depositions, to issue, quash or modify subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to an appropriate United States district court. All action relating to depositions and subpoenas shall be in accordance with the rules provided in §§ 263.34 and 263.53.

(e) *Recommendation of presiding officers.* The presiding officers shall make a recommendation to the Board concerning the notice or order of suspension, removal, or prohibition within 20 calendar days following the close of the record on the hearing.

§ 263.74 Decision of the Board.

(a) Within 60 days following the close of the record on the hearing, or receipt of written submissions where a hearing has been waived, the Board shall notify the institution-affiliated party whether the notice of suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. The notification shall contain a statement of the basis for any adverse decision by the Board. In the case of a decision favorable to the institution-affiliated party, the Board shall take prompt action to rescind or otherwise modify the order of suspension, removal or prohibition.

(b) In deciding the question of suspension, removal, or prohibition under this subpart, the Board shall not rule on the question of the guilt or innocence of the individual with respect to the crime with which the individual has been charged.

Subpart E—Procedures for Issuance and Enforcement of Directives To Maintain Adequate Capital

§ 263.80 Purpose and scope.

This subpart establishes procedures under which the Board may issue a directive or take other action to require a state member bank or a bank holding company to achieve and maintain adequate capital.

§ 263.81 Definitions.

(a) *Bank holding company* means any company that controls a bank as defined in section 2 of the BHCA, 12 U.S.C. 1841, and in the Board's Regulation Y (12 CFR 225.2(b)) or any direct or indirect subsidiary thereof other than a bank subsidiary as defined in section 2(c) of the BHCA, 12 U.S.C. 1841(c), and in the Board's Regulation Y (12 CFR 225.2(a)).

(b) *Capital Adequacy Guidelines* means those guidelines for bank holding companies and state member banks contained in appendix A and D to the Board's Regulation Y (12 CFR part 225), and in appendix A to the Board's Regulation H (12 CFR part 208), or any succeeding capital guidelines promulgated by the Board.

(c) *Directive* means a final order issued by the Board pursuant to ILSA (12 U.S.C. 3907(b)(2)) requiring a state member bank or bank holding company to increase capital to or maintain capital at the minimum level set forth in the Board's Capital Adequacy Guidelines or as otherwise established under procedures described in § 263.85 of this subpart.

(d) *State member bank* means any state-chartered bank that is a member of the Federal Reserve System.

§ 263.82 Establishment of minimum capital levels.

The Board has established minimum capital levels for state member banks and bank holding companies in its Capital Adequacy Guidelines. The Board may set higher capital levels as necessary and appropriate for a particular state member bank or bank holding company based upon its financial condition, managerial resources, prospects, or similar factors, pursuant to the procedures set forth in § 263.85 of this subpart.

§ 263.83 Issuance of capital directives.

(a) *Notice of intent to issue directive.* Except as provided in § 263.85 of this subpart, if a state member bank or bank holding company is operating with less than the minimum level of capital established in the Board's Capital Adequacy Guidelines, the Board may issue and serve upon such state member

bank or bank holding company written notice of the Board's intent to issue a directive to require the bank or bank holding company to achieve and maintain adequate capital within a specified time period.

(b) *Contents of notice.* The notice of intent to issue a directive shall include:

(1) The required minimum level of capital to be achieved or maintained by the institution;

(2) Its current level of capital;

(3) The proposed increase in capital needed to meet the minimum requirements;

(4) The proposed date or schedule for meeting these minimum requirements;

(5) When deemed appropriate, specific details of a proposed plan for meeting the minimum capital requirements; and

(6) The date for a written response by the bank or bank holding company to the proposed directive, which shall be at least 14 days from the date of issuance of the notice unless the Board determines a shorter period is necessary because of the financial condition of the bank or bank holding company.

(c) *Response to notice.* The bank or bank holding company may file a written response to the notice within the time period set by the Board. The response may include:

(1) An explanation why a directive should not be issued;

(2) Any proposed modification of the terms of the directive;

(3) Any relevant information, mitigating circumstances, documentation or other evidence in support of the institution's position regarding the proposed directive; and

(4) The institution's plan for attaining the required level of capital.

(d) *Failure to file response.* Failure by the bank or bank holding company to file a written response to the notice of intent to issue a directive within the specified time period shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of such directive.

(e) *Board consideration of response.* After considering the response of the bank or bank holding company, the Board may:

(1) Issue the directive as originally proposed or in modified form;

(2) Determine not to issue a directive and so notify the bank or bank holding company; or

(3) Seek additional information or clarification of the response by the bank or bank holding company.

(f) *Contents of directive.* Any directive issued by the Board may order the bank or bank holding company to:

(1) Achieve or maintain the minimum capital requirement established pursuant to the Board's Capital Adequacy Guidelines or the procedures in § 263.85 of this subpart by a certain date;

(2) Adhere to a previously submitted plan or submit for approval and adhere to a plan for achieving the minimum capital requirement by a certain date;

(3) Take other specific action as the Board directs to achieve the minimum capital levels, including requiring a reduction of assets or asset growth or restriction on the payment of dividends; or

(4) Take any combination of the above actions.

(g) *Request for reconsideration of directive.* Any state member bank or bank holding company, upon a change in circumstances, may request the Board to reconsider the terms of a directive and may propose changes in the plan under which it is operating to meet the required minimum capital level. The directive and plan continue in effect while such request is pending before the Board.

§ 263.84 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United States district court, pursuant to section 908 (b)(2)(B)(ii) of ILA (12 U.S.C. 3907(b)(2)(B)(ii)) and to section 8(i) of the FDIA (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(2) The Board, pursuant to section 910(d) of ILA (12 U.S.C. 3909(d)), may also assess civil money penalties for violation of the directive against any bank or bank holding company and any institution-affiliated party of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order.

(b) *Other enforcement actions.* A directive may be issued separately, in conjunction with, or in addition to any other enforcement actions available to the Board, including issuance of cease-and-desist orders, the approval or denial of applications or notices, or any other actions authorized by law.

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute

administered by the Board, the Board may consider the progress of a state member bank or bank holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank or bank holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

§ 263.85 Establishment of increased capital level for specific institutions.

(a) *Establishment of capital levels for specific institutions.* The Board may establish a capital level higher than the minimum specified in the Board's Capital Adequacy Guidelines for a specific bank or bank holding company pursuant to:

(1) A written agreement or memorandum of understanding between the Board or the appropriate Federal Reserve Bank and the bank or bank holding company;

(2) A temporary or final cease-and-desist order issued pursuant to section 8(b) or (c) of the FDIA (12 U.S.C. 1818(b) or (c));

(3) A condition for approval of an application or issuance of a notice of intent not to disapprove a proposal;

(4) Or other similar means; or

(5) The procedures set forth in paragraph (b) of this section.

(b) *Procedure to establish higher capital requirement—(1) Notice.* When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank or bank holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response.* The bank or bank holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank or bank holding company. Failure by the bank or bank holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond

and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision.* After considering the response of the institution, the Board may issue a written directive to the bank or bank holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank or bank holding company to submit and adhere to a plan for achieving such higher capital level as the Board may set.

(4) *Enforcement of higher capital level.* The Board may enforce the capital level established pursuant to the procedures described in this section and any plan submitted to achieve that capital level through the procedures set forth in § 263.84 of this subpart.

Subpart F—Practice Before the Board

§ 263.90 Scope.

This subpart prescribes rules relating to general practice before the Board on one's own behalf or in a representational capacity, including the circumstances under which disciplinary sanctions—censure, suspension, or debarment—may be imposed upon persons appearing in a representational capacity, including attorneys and accountants, but not including employees of the Board. These disciplinary sanctions, which continue in effect beyond the duration of a specific proceeding, supplement the provisions of § 263.6(b) of subpart A, which address control of a specific proceeding.

§ 263.91 Censure, suspension or debarment.

The Board may censure an individual or suspend or debar such individual from practice before the Board if he or she engages, or has engaged, in conduct warranting sanctions as set forth in § 263.94; refuses to comply with the rules and regulations in this part; or with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual shall be initiated only upon a finding by the Board that the conduct that forms the basis for the disciplinary action is egregious.

§ 263.92 Definitions.

As used in this subpart, the following terms shall have the meaning given in this section unless the context otherwise requires.

(a)(1) *Practice before the Board* includes any matters connected with

presentations to the Board or to any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the Board. Such matters include, but are not limited to, the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the Board, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the Board on behalf of another person.

(2) *Practice before the Board* does not include work prepared for an institution solely at its request for use in the ordinary course of its business.

(b) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.

(c) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth, or the District of Columbia.

§ 263.93 Eligibility to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or debarment pursuant to this subpart may practice before the Board.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the Board may practice before the Board.

§ 263.94 Conduct warranting sanctions.

Conduct for which an individual may be censured, debarred or suspended from practice before the Board includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust;

(b) Knowingly giving false or misleading information, or participating in any way in the giving of false information to the Board or to any Board officer or employee, or to any tribunal authorized to pass upon matters administered by the Board in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications,

affidavits, declarations, or any other document or written or oral statement;

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the Board by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value;

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, commonwealth, or the District of Columbia for the conviction of a felony or misdemeanor involving personal dishonesty or breach of trust in matters relating to the supervisory responsibilities of the Board, where the conviction has not been reversed on appeal;

(e) Knowingly aiding or abetting another individual to practice before the Board during that individual's period of suspension, debarment, or ineligibility;

(f) Contemptuous conduct in connection with practice before the Board, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter;

(g) Suspension or debarment from practice before the OCC, the FDIC, the OTS, the Securities and Exchange Commission, the NCUA, or any other Federal agency based on matters relating to the supervisory responsibilities of the Board;

(h) Willful or knowing violation of any of the regulations contained in this part.

§ 263.95 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the Board, who has reason to believe that an individual practicing before the Board in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 263.94, may make a report thereof and forward it to the Board.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the Board, the Board may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Board has reason to believe that any individual who practices before the Board in a representative capacity has engaged in conduct that would serve as a basis for

censure, suspension or debarment under § 263.94 the Board may, after giving the individual notice and opportunity to respond, institute a formal disciplinary proceeding against such individual. The proceeding shall be conducted pursuant to § 263.97 and shall be initiated by a complaint issued by the Board that names the individual as a respondent. Except in cases when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section shall not be instituted until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the initiation of the proceeding.

§ 263.96 Conferences.

(a) *General.* The Board's staff may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been instituted. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the Board may consent to suspension from practice. At the discretion of the Board, the individual may be suspended or debarred in accordance with the consent offered.

§ 263.97 Proceedings under this subpart.

Except as otherwise provided in this subpart, any hearing held under this subpart shall be held before an administrative law judge of the OFIA pursuant to procedures set forth in subpart A of this part. The Board shall appoint a person to represent the Board in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding shall be disqualified from representing the Board in the hearing. The hearing shall be closed to the public unless the Board, sua sponte or on the request of a party, otherwise directs. The administrative law judge shall refer a recommended decision to the Board, which shall issue the final decision and order. In its final decision and order, the

Board may censure, debar or suspend an individual, or take such other disciplinary action as the Board deems appropriate.

§ 263.98 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual will not thereafter be permitted to practice before the Board unless otherwise permitted to do so by the Board pursuant to § 263.99 of this subpart.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual will not thereafter be permitted to practice before the Board during the period of suspension.

(c) *Censure.* If the final order against the individual is for censure, the individual may be permitted to practice before the Board, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the Board's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Board shall give notice of the order to appropriate officers and employees of the Board, to interested departments and agencies of the Federal Government, and to the appropriate authorities of the State in which any debarred or suspended individual is or was licensed to practice.

§ 263.99 Petition for reinstatement.

The Board may entertain a petition for reinstatement from any person debarred from practice before the Board. The Board shall grant reinstatement only if the Board finds that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Board, in its discretion, affords the petitioner an informal hearing.

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

§ 263.100 Authority and scope.

This subpart implements the provisions of the Equal Access to Justice Act (5 U.S.C. 504) as they apply to formal adversary adjudications before the Board. The types of proceedings covered by this subpart are listed in §§ 263.1 and 263.50.

§ 263.101 Standards for awards.

A respondent in a covered proceeding that prevails on the merits of that

proceeding against the Board, and that is eligible under this subpart as defined in § 263.103, may receive an award for fees and expenses incurred in the proceeding unless the position of the Board during the proceeding was substantially justified or special circumstances make an award unjust. The position of the Board includes, in addition to the position taken by the Board in the adversary proceeding, the action or failure to act by the Board upon which the adversary proceeding was based. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings.

§ 263.102 Prevailing party.

Only an eligible applicant that prevailed on the merits of an adversary proceeding may qualify for an award under this subpart.

§ 263.103 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named as a party to the adjudicatory proceeding and show that it meets all other conditions of eligibility set forth below.

(b) *Types of eligible applicant.* An applicant is eligible for an award only if it meets at least one of the following descriptions:

(1) An individual with a net worth of not more than \$2 million at the time the adversary adjudication was initiated;

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed \$7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees at the time the adversary proceeding was initiated; or

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees at the time the adversary proceeding was initiated.

(c) *Factors to be considered.* In determining the eligibility of an applicant:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevailed are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a financial institution shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the financial institution's financial report to its supervisory agency for the last reporting date before the initiation of the adversary proceeding. A bank holding company's net worth will be considered on a consolidated basis even if the bank holding company is not required to file its regulatory reports to the Board on a consolidated basis.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary proceeding was initiated. Part-time employees are counted on a proportional basis.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. As used in this subpart, "affiliates" are: Individuals, corporations, and entities that directly or indirectly or acting through one or more entities control at least 25% of the voting shares of the applicant, and corporations and entities of which the applicant directly or indirectly owns or controls at least 25% of the voting shares. The Board may determine, in light of the actual relationship among the affiliated entities, that aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart and decline to aggregate the net worth and employees of such affiliate; alternatively, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

§ 263.104 Application for awards.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Board whenever the applicant has prevailed in the proceeding within 30 days after service of the final order of the Board disposing of the proceeding.

(b) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of the way in which the applicant believes that the position of the Board in the proceeding was not substantially justified;

(3) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(4) A description of any affiliated individuals or entities, as defined in § 263.103(c)(5), or a statement that none exist;

(5) A declaration that the applicant, together with any affiliates, had a net worth not more than the maximum set forth in § 263.103(b) as of the date the proceeding was initiated, supported by a net worth statement conforming to the requirements of § 263.105;

(6) A statement of the amount of fees and expenses for which an award is sought conforming to § 263.107; and

(7) Any other matters that the applicant wishes the Board to consider in determining whether and in what amount an award should be made.

(c) *Verification.* The application shall be signed by the applicant or an authorized officer of or attorney for the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

(d) *Service.* The application and related documents shall be served on all parties to the adversary proceeding in accordance with § 263.11, except that statements of net worth shall be served only on counsel for the Board.

(e) *Presiding officer.* Upon receipt of an application, the Board shall, if feasible, refer the matter to the administrative law judge who heard the underlying adversary proceeding.

§ 263.105 Statement of net worth.

(a) *General rule.* A statement of net worth shall be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant, as specified in § 263.103(c)(5). In all cases, the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding.

(b) *Contents.* (1) Except as otherwise provided herein, the statement of net worth may be in any form convenient to

the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication.

Unaudited financial statements are acceptable for individual applicants as long as the statement provides a reliable basis for evaluation, unless the administrative law judge or the Board otherwise requires. Financial statements or reports filed with or reported to a Federal or State agency, prepared before the initiation of the adversary proceeding for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, shall be acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 263.103(c)(5). The net worth of a bank holding company shall be considered on a consolidated basis. Assets and liabilities of individuals shall include those beneficially owned.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. Net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board or required by law, the statement of net worth shall be for the confidential use of the Board, counsel for the Board, and the administrative law judge.

§ 263.106 Measure of awards.

(a) *General rule.* Awards shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, provided that no award under this subpart for the fee of an attorney or agent shall exceed \$75 per hour. No award to compensate an expert witness shall exceed the highest rate at which the Board pays expert witnesses.

An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, subject to the limits set forth above, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services.

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary solely for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 263.107 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 263.108 Responses to application.

(a) *By counsel for the Board.* (1) Within 20 days after service of an

application, counsel for the Board may file an answer to the application.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Board's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 263.109, or both.

(b) *Reply to answer.* The applicant may file a reply only if the Board has addressed in its answer any of the following issues: that the position of the agency was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. Any reply authorized by this section shall be filed within 15 days of service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 263.109, or both.

(c) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 263.109 Further proceedings.

(a) *General rule.* The determination of a recommended award shall be made by the administrative law judge on the basis of the written record of the adversary adjudication, including any supporting affidavits submitted in connection with the application, unless, on the motion of either the applicant or Board counsel, or sua sponte, the administrative law judge or the Board orders further proceedings to amplify the record such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application and shall be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* The administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 263.110 Recommended decision.

The administrative law judge shall file with the Board a recommended decision

on the fee application not later than 30 days after the submission of all pleadings and evidentiary material concerning the application. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and, if applicable, an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings as to whether the Board's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application upon the filing of the recommended decision and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 263.111 Action by the Board.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the Board may file written exceptions thereto. A supporting brief may also be filed.

(b) *Decision by the Board.* The Board shall render its decision within 90 days after it has notified the parties that the matter has been received for decision. The Board shall serve copies of the decision and order of the Board upon the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

Dated: June 5, 1991.

William W. Wiles,
Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, Banking, *Ex parte* communication, Hearing procedure, Penalties, State nonmember banks.

Authority and Issuance

For the reasons set forth in the common preamble, part 308 of chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 308—RULES OF PRACTICE AND PROCEDURES

1. The authority citation for part 308 is revised to read as follows:

Authority: 12 U.S.C. 1815(e), 1817 (a) and (j), 1818, 1820, 1828(j), 1829, 1831i (secs. 5(e), 7(a), 7(j), 8, 10, 18(j), 19, and 32 of the FDIA); 15 U.S.C. 78l(h), 78m, 78n(a), 78n(c), 78n(d), 78n(f), 78o, 78o-4(c)(5), 78p, 78q, 78q-1, 78s (secs. 12(h), 13, 14(a), 14(c), 14(d), 14(f), 15(b)(4), 15B(c)(5), 16, 17, 17A, 19 of the Securities Exchange Act of 1934); 5 U.S.C. 504 (Equal Access to Justice Act); 5 U.S.C. 554-557 (secs. of the Administrative Procedure Act).

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

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|--------|--|
| Sec. | |
| 308.1 | Scope. |
| 308.2 | Rules of construction. |
| 308.3 | Definitions. |
| 308.4 | Authority of Agency Head. |
| 308.5 | Authority of the administrative law judge. |
| 308.6 | Appearance and practice in adjudicatory proceedings. |
| 308.7 | Good faith certification. |
| 308.8 | Conflicts of interest. |
| 308.9 | Ex parte communications. |
| 308.10 | Filing of papers. |
| 308.11 | Service of papers. |
| 308.12 | Construction of time limits. |
| 308.13 | Change of time limits. |
| 308.14 | Witness fees and expenses. |
| 308.15 | Opportunity for informal settlement. |
| 308.16 | Agency's right to conduct examination. |
| 308.17 | Collateral attacks on adjudicatory proceeding. |
| 308.18 | Commencement of proceeding and contents of notice. |
| 308.19 | Answer. |
| 308.20 | Amended pleadings. |
| 308.21 | Failure to appear. |
| 308.22 | Consolidation and severance of actions. |
| 308.23 | Motions. |
| 308.24 | Scope of document discovery. |
| 308.25 | Request for document discovery from parties. |
| 308.26 | Document subpoenas to nonparties. |
| 308.27 | Deposition of witness unavailable for hearing. |
| 308.28 | Interlocutory review. |
| 308.29 | Summary disposition. |
| 308.30 | Partial summary disposition. |
| 308.31 | Scheduling and prehearing conferences. |
| 308.32 | Prehearing submissions. |
| 308.33 | Public hearings. |
| 308.34 | Hearing subpoenas. |
| 308.35 | Conduct of hearings. |
| 308.36 | Evidence. |
| 308.37 | Proposed findings and conclusions. |
| 308.38 | Recommended decision and filing of record. |
| 308.39 | Exceptions to recommended decision. |
| 308.40 | Review by Agency Head. |

Sec.

308.41 Stays pending judicial review.

3. Subparts B through N and subpart P are revised and subpart O is added to read as follows:

Subpart B—General Rules of Procedure

- 308.100 Definitions.
- 308.101 Scope of Local Rules.
- 308.102 Authority of Board of Directors and Executive Secretary.
- 308.103 Appointment of administrative law judge.
- 308.104 Filings with the Board of Directors.
- 308.105 Custodian of the record.
- 308.106 Written testimony in lieu of oral hearing.
- 308.107 Document discovery.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

- 308.108 Sanctions.
- 308.109 Suspension and disbarment.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

- 308.110 Scope.
- 308.111 Grounds for disapproval.
- 308.112 Notice of disapproval.
- 308.113 Answer to notice of disapproval.
- 308.114 Burden of proof.

Subpart E—Rules and Procedures Applicable to Proceedings Relating To Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

- 308.115 Scope.
- 308.116 Assessment of penalties.
- 308.117 Effective date of, and payment under, an order to pay.
- 308.118 Collection of penalties.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

- 308.119 Scope.
- 308.120 Grounds for termination of insurance.
- 308.121 Notification to primary regulator.
- 308.122 Notice of intent to terminate.
- 308.123 Notice to depositors.
- 308.124 Involuntary termination of insured status for failure to receive deposits.
- 308.125 Temporary suspension of deposit insurance.
- 308.126 Special supervisory associations.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

- 308.127 Scope.
- 308.128 Grounds for cease-and-desist orders.
- 308.129 Notice to state supervisory authority.
- 308.130 Effective date of order and service on bank.
- 308.131 Temporary cease-and-desist order.

Subpart H—Rules and Procedures Applicable To Proceedings Relating To Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

- Sec.
- 308.132 Assessment of penalties.
- 308.133 Effective date of, and payment under, an order to pay.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

- 308.134 Scope.
- 308.135 Grounds for imposition of sanctions.
- 308.136 Notice to and consultation with the Securities and Exchange Commission.
- 308.137 Effective date of order imposing sanctions.

Subpart J—Rules and Procedures Relating To Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

- 308.138 Scope.
- 308.139 Application for exemption.
- 308.140 Newspaper notice.
- 308.141 Notice of hearing.
- 308.142 Hearing.
- 308.143 Decision of Board of Directors.

Subpart K—Procedures Applicable To Investigations Pursuant to Section 10(c) of the Act

- 308.144 Scope.
- 308.145 Conduct of investigation.
- 308.146 Powers of person conducting investigation.
- 308.147 Investigations confidential.
- 308.148 Rights of witnesses.
- 308.149 Service of subpoena.
- 308.150 Transcripts.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the Act

- 308.151 Scope.
- 308.152 Grounds for disapproval of notice.
- 308.153 Procedures where notice of disapproval issues pursuant to § 303.14 of this chapter.
- 308.154 Decision on review.
- 308.155 Hearing.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

- 308.156 Scope.
- 308.157 Relevant considerations.
- 308.158 Filing papers and effective date.
- 308.159 Denial of applications.
- 308.160 Hearings.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

- 308.161 Scope.
- 308.162 Relevant considerations.
- 308.163 Notice of suspension, and orders of removal or prohibition.
- 308.164 Hearings.

Subpart O—Liability of Commonly Controlled Depository Institutions

- Sec.
- 308.165 Scope.
- 308.166 Grounds for assessment of liability.
- 308.167 Notice of assessment of liability.
- 308.168 Effective date of and payment under an order to pay.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

- 308.169 Scope.
- 308.170 Filing, content, and service of documents.
- 308.171 Responses to application.
- 308.172 Eligibility of applicants.
- 308.173 Prevailing party.
- 308.174 Standards for awards.
- 308.175 Measure of awards.
- 308.176 Application for awards.
- 308.177 Statement of net worth.
- 308.178 Statement of fees and expenses.
- 308.179 Settlement negotiations.
- 308.180 Further proceedings.
- 308.181 Recommended decision.
- 308.182 Board of Directors action.
- 308.183 Payment of awards.

Subpart B—General Rules of Procedure**§ 308.100 Definitions.**

For purposes of this part 308, including the Uniform Rules, unless explicitly stated to the contrary:

(a) *Board of Directors* or the *designee* of the Board of Directors means the Board of Directors of the FDIC or the officers or officials of the FDIC acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR part 303 or by specific resolution of the Board of Directors; and

(b) *Executive Secretary* means the Executive Secretary of the FDIC or his or her designee.

§ 308.101 Scope of local rules.

(a) Subparts B and C of the Local Rules prescribe rules of practice and procedure to be followed in the administrative enforcement proceedings initiated by the FDIC as set forth in § 308.01 of the Uniform Rules.

(b) Except as otherwise specifically provided, the Uniform Rules and subpart B of the Local Rules shall not apply to subparts D through P of the Local Rules.

(c) Subpart C of the Local Rules shall apply to any administrative proceeding initiated by the FDIC.

§ 308.102 Authority of Board of Directors and Executive Secretary.

(a) *The Board of Directors.* (1) The Board of Directors may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Executive Secretary.

(2) Nothing contained in Part 308 shall be construed to limit the power of the Board of Directors granted by applicable statutes or regulations.

(b) *The Executive Secretary.* When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a recommended decision on the merits to the Board of Directors.

§ 308.103 Appointment of administrative law judge.

(a) *Appointment.* Unless otherwise directed by the Board of Directors or as otherwise provided in the Local Rules, a hearing within the scope of this Part 308 shall be held before an administrative law judge of the Office of Financial Institution Adjudication ("OFIA").

(b) *Procedures.* (1) The Executive Secretary shall promptly after issuance of the Notice refer the matter to the OFIA which shall secure the appointment of an administrative law judge to hear the proceeding.

(2) OFIA shall advise the parties, in writing, that an administrative law judge has been appointed.

§ 308.104 Filings with the Board of Directors.

(a) *General Rule.* All materials required to be filed with or referred to the Board of Directors in any proceedings under this Part 308 shall be filed with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

(b) *Scope.* Filings to be made with the Executive Secretary include the record filed by the administrative law judge after the issuance of a recommended decision; the recommended decision filed by the administrative law judge following a motion for summary disposition; referrals by the administrative law judge of motions for interlocutory review; motions and responses to motions filed by the parties after the record has been certified to the Board of Directors; exceptions and requests for oral argument; and any other papers required to be filed with the Board of Directors under this part 308.

§ 308.105 Custodian of the record.

The Executive Secretary is the official custodian of the record when no administrative law judge has jurisdiction over the proceeding. As the official custodian, the Executive Secretary shall maintain the official

record of all papers filed in each proceeding.

§ 308.106 Written testimony in lieu of oral hearing.

(a) *General rule.* (1) At any time more than fifteen days before the hearing is to commence, on the motion of any party or on his or her own motion, the administrative law judge may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the administrative law judge shall not require such a format if that format would violate the objecting party's right under the Administrative Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period for commencement of the hearing, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any shall be submitted and the oral portion of the hearing begun within 30 days of the date set for filing written direct testimony.

(3) The administrative law judge shall direct, unless good cause requires otherwise, that—

(i) all parties shall simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section; and

(ii) all parties shall simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.* (1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the manner required under this section shall be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of

that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

§ 308.107 Document discovery.

(a) Parties to proceedings set forth at § 308.01 of the Uniform Rules and in the Local Rules may obtain discovery only through the production of documents. No other form of discovery shall be allowed.

(b) Any questioning at a deposition of a person producing documents pursuant to a document subpoena shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

Subpart C—Rules of Practice Before the FDIC and Standards of Conduct

§ 308.108 Sanctions.

(a) *General rule.* Appropriate sanctions may be imposed when any counsel or party has acted, or failed to act, in a manner required by applicable statute, regulations, or order, and that act or failure to act:

(1) Constitutes contemptuous conduct;

(2) Has in a material way injured or prejudiced some other party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise;

(3) Is a clear and unexcused violation of an applicable statute, regulation, or order; or

(4) Has unduly delayed the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following:

(1) Issuing an order against the party;

(2) Rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party;

(3) Precluding the party from contesting specific issues or findings;

(4) Precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party;

(5) Precluding the party from making a late filing or conditioning a late filing on any terms that are just; and

(6) Assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Limits on dismissal as a sanction.* No recommendation of dismissal shall

be made by the administrative law judge or granted by the Board of Directors based on the failure to hold a hearing within the time period called for in this Part 308, or on the failure of an administrative law judge to render a recommended decision within the time period called for in this Part 308, absent a finding:

(1) That the delay resulted solely or principally from the conduct of the FDIC enforcement counsel;

(2) That the conduct of the FDIC enforcement counsel is unexcused;

(3) That the moving respondent took all reasonable steps to oppose and prevent the subject delay;

(4) That the moving respondent has been materially prejudiced or injured; and

(5) That no lesser or different sanction is adequate.

(d) *Procedure for imposition of sanctions.* (1) The administrative law judge, upon the request of any party, or on his or her own motion, may impose sanctions in accordance with this section, provided that the administrative law judge may only recommend to the Board of Directors the sanction of entering a final order determining the case on the merits.

(2) No sanction, other than refusing to accept late papers, authorized by this section shall be imposed without prior notice to all parties and an opportunity for any counsel or party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the administrative law judge directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge.

(4) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or the Board of Directors from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

§ 308.109 Suspension and disbarment.

(a) *Discretionary suspension and disbarment.* (1) The Board of Directors may suspend or revoke the privilege of any counsel to appear or practice before the FDIC if, after notice of and opportunity for hearing in the matter,

that counsel is found by the Board of Directors:

(i) Not to possess the requisite qualifications to represent others;

(ii) To be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct;

(iii) To have engaged in, or aided and abetted, a material and knowing violation of the Act; or

(iv) To have engaged in contemptuous conduct before the FDIC.

Suspension or revocation on the grounds set forth in paragraphs (a)(1) (ii), (iii), and (iv) of this section shall only be ordered upon a further finding that the counsel's conduct or character was sufficiently egregious as to justify suspension or revocation.

(2) Unless otherwise ordered by the Board of Directors, an application for reinstatement by a person suspended or disbarred under paragraph (a)(1) of this section may be made in writing at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. The suspension or disbarment shall continue until the applicant has been reinstated by the Board of Directors for good cause shown or until, in the case of a suspension, the suspension period has expired. An applicant for reinstatement under this provision may, in the Board of Directors's sole discretion, be afforded a hearing.

(b) *Mandatory suspension and disbarment.* (1) Any counsel who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice before the OCC, Board of Governors, the OTS, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been convicted of a felony, or of a misdemeanor involving moral turpitude, within the last ten years, shall be suspended automatically from appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarment, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(2) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Failure to file any such paper shall not impair the operation of any other provision of this section.

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board of Directors for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Executive Secretary, upon appropriate application, if all the grounds for suspension or disbarment under paragraph (b)(1) are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time not less than one year after the applicant's most recent application. An applicant for reinstatement under this provision may, in the Board of Directors' sole discretion, be afforded a hearing.

(c) *Hearing under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under the Uniform Rules, provided that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof, and that the Board of Directors may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by the FDIC be limited to written submissions.

(d) *Summary suspension for contemptuous conduct.* A finding by the administrative law judge of contemptuous conduct during the course of any proceeding shall be grounds for summary suspension by the administrative law judge of a counsel or other representative from any further participation in that proceeding for the duration of that proceeding.

(e) *Practice defined.* Unless the Board of Directors orders otherwise, for the purposes of this section, practicing before the FDIC includes, but is not limited to, transacting any business with the FDIC as counsel or agent for any

other person and the preparation of any statement, opinion, or other paper by a counsel, which statement, opinion, or paper is filed with the FDIC in any registration statement, notification, application, report, or other document, with the consent of such counsel.

Subpart D—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

§ 308.110 Scope.

Except as specifically indicated in this subpart, the rules and procedures in this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings in connection with the disapproval by the Board of Directors or its designee of a proposed acquisition of control of an insured nonmember bank.

§ 308.111 Grounds for disapproval.

The following are grounds for disapproval of a proposed acquisition of control of an insured nonmember bank:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the banking business in any part of the United States;

(b) The effect of the proposed acquisition of control in any section of the United States may be to substantially lessen competition or to tend to create a monopoly or would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(d) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit such person to control the bank;

(e) Any acquiring person neglects, fails, or refuses to furnish to the FDIC all the information required by the FDIC; or

(f) The FDIC determines that the proposed acquisition would result in an adverse effect on the Bank Insurance

Fund or the Savings Association Insurance Fund.

§ 308.112 Notice of disapproval.

(a) *General rule.* (1) Within three days of the decision by the Board of Directors or its designee to disapprove a proposed acquisition of control of an insured nonmember bank, a written notice of disapproval shall be mailed by first class mail to, or otherwise served upon, the party seeking acquire control.

(2) The notice of disapproval shall:

(i) Contain a statement of the basis for the disapproval; and

(ii) Indicate that a hearing may be requested by filing a written request with the Executive Secretary within ten days after service of the notice of disapproval; and if a hearing is requested, that an answer to the notice of disapproval, as required by § 308.113, must be filed within 20 days after service of the notice of disapproval.

(b) *Waiver of hearing.* Failure to request a hearing pursuant to this section shall constitute a waiver of the opportunity for a hearing and the notice of disapproval shall constitute a final and unappealable order.

(c) Section 308.18(b) of the Uniform Rules shall not apply to the content of the Notice of Disapproval.

§ 308.113 Answer to notice of disapproval.

(a) *Contents.* (1) An answer to the notice of disapproval of a proposed acquisition of control shall be filed within 20 days after service of the notice of disapproval and shall specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice of disapproval which are not specifically denied are deemed admitted by the applicant.

(2) Any hearing under this subpart shall be limited to those parts of the notice of disapproval that are specifically denied.

(b) *Failure to answer.* Failure of a party to file a timely answer pursuant to this section shall be deemed a waiver of the party's right to appear at a hearing and contest the disapproval and the notice of disapproval shall constitute a final and unappealable order.

§ 308.114 Burden of proof.

The ultimate burden of proof shall be upon the person proposing to acquire a depository institution. The burden of going forward with a *prima facie* case shall be upon the FDIC.

Subpart E—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

§ 308.115 Scope.

The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978, or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank.

§ 308.116 Assessment of penalties.

(a) *In general.* The civil money penalty shall be assessed upon the service of a Notice of Assessment which shall become final and unappealable unless the respondent both requests a hearing pursuant to § 308.19(a); and files an answer pursuant to the provisions of § 308.19 of the Uniform Rules.

(b) *Amount.* (1) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto, shall forfeit and pay a civil money penalty of not more than \$5,000 for each day the violation continues.

(2) Any person who violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or recklessly engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; which violation, practice or breach is part of a pattern of misconduct; or causes or is likely to cause more than a minimal loss to such institution; or results in pecuniary gain or other benefit to such person, shall forfeit and pay a civil money penalty of not more than \$25,000 for each day such violation, practice or breach continues.

(3) Any person who knowingly violates any provision of the Change in Bank Control Act or any rule, regulation, or order issued by the FDIC pursuant thereto; or engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or breaches any fiduciary duty; and knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice or breach, shall

forfeit and pay a civil money penalty not to exceed:

(i) In the case of a person other than a depository institution—\$1,000,000 per day for each day the violation, practice or breach continues; or

(ii) In the case of a depository institution—an amount not exceed the lesser of \$1,000,000 or one percent of the total assets of such institution for each day the violation, practice or breach continues.

(c) *Mitigating factors.* In assessing the amount of the penalty, the Board of Directors or its designee shall consider the gravity of the violation, the history of previous violations, respondent's financial resources, good faith, and any other matters as justice may require.

(d) *Failure to answer.* Failure of a party to file a timely answer pursuant to this section shall be deemed a waiver of the party's right to appear at a hearing and contest the allegations in the notice.

§ 308.117 Effective date of, and payment under, an order to pay.

If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

§ 308.118 Collection of penalties.

The FDIC may collect any civil penalty assessed pursuant to this subpart by agreement with the respondent, or the FDIC may bring an action against the respondent to recover the penalty amount in the appropriate United States district court. All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart F—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

§ 308.119 Scope.

(a) *Involuntary termination of insurance pursuant to section 8(a) of the FDIA.* The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank depository institution or an insured branch of a foreign bank pursuant to section 8(a) of the FDIA (12 U.S.C. 2828(a)), except that the Uniform Rules and subpart B of the

Local Rules shall not apply to the temporary suspension of insurance pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)).

(b) *Involuntary termination of insurance pursuant to section 8(p) of the Act.* The rules and procedures in § 308.124 of this subpart F shall apply to proceedings in connection with the involuntary termination of the insured status of an insured depository institution or an insured branch of a foreign bank pursuant to section 8(p) of the FDIA (12 U.S.C. 1818(p)). The Uniform Rules shall not apply to proceedings under section 8(p) of the FDIA.

§ 308.120 Grounds for termination of insurance.

(a) *General rule.* The following are grounds for involuntary termination of insurance pursuant to section 8(a) of the FDIA:

(1) An insured depository institution or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such depository institution;

(2) An insured depository institution is in an unsafe or unsound condition such that it should not continue operations as an insured depository institution; or

(3) An insured depository institution or its directors or trustees have violated an applicable law, rule, regulation, order, condition imposed in writing by the FDIC in connection with the granting of any application or other request by the insured depository institution or have violated any written agreement entered into between the insured depository institution and the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its directors or trustees which would otherwise be a ground for termination of insured status under this section shall be a ground for termination if the Board of Directors finds:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia that, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

(c) *Failure of foreign bank to secure removal of personnel.* The failure of a foreign bank to comply with any order of removal or prohibition issued by the Board of Directors or the failure of any person associated with a foreign bank to

appear promptly as a party to a proceeding pursuant to section 8(e) of the FDIA (12 U.S.C. 1818(e)), shall be a ground for termination of insurance of deposits in any branch of the bank.

§ 308.121 Notification to primary regulator.

(a) *Service of notification.* (1) Upon a determination by the Board of Directors or its designee pursuant to § 308.120 of an unsafe or unsound practice or condition or of a violation, a notification shall be served upon the appropriate Federal banking agency of the insured depository institution, or the State banking supervisor if the FDIC is the appropriate Federal banking agency. The notification shall be served not less than 30 days before the Notice of Intent to Terminate Insured Status required by section 8(a)(2)(B) of the FDIA (12 U.S.C. 1818(a)(2)(B)), and § 308.122, except that this period for notification may be reduced or eliminated with the agreement of the appropriate Federal banking agency.

(2) "Appropriate Federal banking agency" shall have the meaning given that term in section 3(q) of the FDIA (12 U.S.C. 283(q)), and shall be the OCC in the case of a national bank, a District bank or an insured Federal branch of a foreign bank; the FDIC in the case of an insured nonmember bank, including an insured State branch of a foreign bank; the Board of Governors in the case of a state member bank; or the OTS in the case of an insured Federal savings association.

(3) In the case of a state nonmember bank, insured Federal branch of a foreign bank, or state member bank, in addition to service of the notification upon the appropriate Federal banking agency, a copy of the notification shall be sent to the appropriate State banking supervisor.

(4) In instances in which a Temporary Order Suspending Insurance is issued pursuant to section 8(a)(8) of the FDIA (12 U.S.C. 1818(a)(8)), the notification may be served concurrently with such order.

(b) *Contents of notification.* The notification shall contain the FDIC's determination, and the facts and circumstances upon which such determination is based, for the purpose of securing correction of such practice, condition, or violation.

§ 308.122 Notice of intent to terminate.

(a) *Notice.* (1) If, after serving the notification under § 308.121, the Board of Directors determines that any unsafe or unsound practices, condition, or violation, specified in the notification,

requires the termination of the insured status of the insured depository institution, the Board of Directors or its designee, if it determines to proceed further, shall cause to be served upon the insured depository institution a notice of its intention to terminate insured status not less than 30 days after service of the notification, unless a shorter time period has been agreed upon by the appropriate Federal banking agency.

(2) The Board of Directors or its designee shall cause a copy of the notice to be sent to the appropriate Federal banking agency and to the appropriate State banking supervisor, if any.

§ 308.123 Notice to depositors.

If the Board of Directors enters an order terminating the insured status of an insured depository institution or branch, the insured depository institution shall, on the day that order becomes final, or on such other day as that order prescribes, mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the insured depository institution or branch. The insured depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date) _____

1. The status of the _____, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the _____ day of _____, 19_____.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the _____ day of _____, 19_____, will continue to be insured, as provided by Federal Deposit Insurance Act, for 2 years after the close of business on the _____ day of _____, 19_____.

Provided, however, that any withdrawals after the close of business on the _____ day of _____, 19_____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of depository institution or branch)

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this

section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.124 Involuntary termination of insured status for failure to receive deposits.

(a) *Notice to show cause.* When the Board of Directors or its designee has evidence that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds, the Board of Directors or its designee shall give written notice of this evidence to the depository institution and shall direct the depository institution to show cause why its insured status should not be terminated under the provisions of section 8(p) of the FDIA. The insured depository institution shall have 30 days after receipt of the notice, or such longer period as is prescribed in the notice, to submit affidavits, other written proof, and any legal arguments that it is engaged in the business of receiving deposits other than trust funds.

(b) *Notice of termination date.* If, upon consideration of the affidavits, other written proof, and legal arguments, the Board of Directors determines that the depository institution is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board of Directors shall notify the depository institution that its insured status will terminate at the expiration of the first full semiannual assessment period following issuance of that notification.

(c) *Notification to depositors of termination of insured status.* Within the time specified by the Board of Directors and prior to the date of termination of its insured status, the depository institution shall mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the depository institution. The depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date) _____

The status of the _____, as an (insured depository institution) (insured branch) under the Federal Deposit Insurance Act, will terminate on the _____ day of _____, 19_____, and its deposits will thereupon cease to be insured.

(Name of depository institution or branch)

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.125 Temporary suspension of deposit insurance.

(a) If, while an action is pending under section 8(a)(2) of the FDIA, the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a special supervisory association to which § 308.126 of this subpart applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Board of Directors may issue a Temporary Order Suspending Deposit Insurance, pending completion of the proceedings under section 8(a)(2) of the FDIA.

(b) The temporary order shall be served upon the insured institution and a copy sent to the appropriate Federal banking agency and to the appropriate State banking supervisor.

(c) The temporary order shall become effective ten days from the date of service upon the insured depository institution. Unless set aside, limited, or suspended in proceedings under section 8(a)(8)(D) of the FDIA, the temporary order shall remain effective and enforceable until an order terminating the insured status of the institution is entered by the Board of Directors and becomes final, or the Board of Directors dismisses the proceedings.

(d) Notification to depositors of suspension of insured status. Within the time specified by the Board of Directors and prior to the suspension of insured status, the depository institution shall mail a notification of suspension of insured status to each depositor at the depositor's last address of record on the books of the depository institution. The depository institution shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date) _____

The status of the _____, as an (insured depository institution) (insured branch) under the provisions of the Federal Deposit Insurance Act, will be suspended as of the close of business on the _____

day of _____, 19_____, pending the completion of administrative proceedings under section 8(a) of the Federal Deposit Insurance Act.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (depository institution) (branch) on the _____ day of _____, 19_____, will continue to be insured for _____ after the close of business on the _____ day of _____, 19_____. Provided, however, that any withdrawals after the close of business on the _____ day of _____, 19_____, will reduce the insurance coverage by the amount of such withdrawals.

(Name of depository institution or branch)

(Address)

The notification may include any additional information the depository institution deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

§ 308.126 Special supervisory associations.

If the Board of Directors finds that a savings association is a special supervisory association under the provisions of section 8(a)(8)(B) of the FDIA for purposes of temporary suspension of insured status, the Board of Directors shall serve upon the association its findings with regard to the determination that the capital of the association, as computed using applicable accounting standards, has suffered a material decline; that such association or its directors or officers, is engaging in an unsafe or unsound practice in conducting the business of the association; that such association is in an unsafe or unsound condition to continue operating as an insured association; or that such association or its directors or officers, has violated any law, rule, regulation, order, condition imposed in writing by any Federal banking agency, or any written agreement, or that the association failed to enter into a capital improvement plan acceptable to the Corporation prior to January, 1990.

Subpart G—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

§ 308.127 Scope.

(a) *Cease-and-desist proceedings under section 8 of the Act.* The rules and procedures of this subpart, subpart B of

the Local Rules and the Uniform Rules shall apply to proceedings to order an insured nonmember bank or an institution-affiliated party to cease and desist from practices and violations described in section 8(b) of the FDIA, 12 U.S.C. 1818(b); provided that the provisions of the Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the FDIA.

(b) *Proceedings under the Securities Exchange Act of 1934.* (1) The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors to order a municipal securities dealer to cease and desist from any violation of law or regulation specified in section 15B(c)(5) of the Exchange Act, as amended (15 U.S.C. 78o-4(c)(5)) where the municipal securities dealer is an insured nonmember bank or a subsidiary thereof.

(2) The rules and procedures of this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors to order a clearing agency or transfer agent to cease and desist from failure to comply with the applicable provisions of section 17, 17A and 19 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q, 78q-1, 78s), and the applicable rules and regulations thereunder, where the clearing agency or transfer agent is an insured nonmember bank or a subsidiary thereof.

§ 308.128 Grounds for cease-and-desist orders.

(a) *General rule.* The Board of Directors or its designee may issue and have served upon any insured nonmember bank or an institution-affiliated party a Notice, as set forth in § 308.18 of the Uniform Rules for practices and violations as described in § 308.127.

(b) *Extraterritorial acts of foreign banks.* An act, violation or practice committed outside the United States by a foreign bank or an institution-affiliated party that would otherwise be a ground for issuing a cease-and-desist order under paragraph (a) of this section or a temporary cease-and-desist order under § 308.131 of this subpart, shall be a ground for an order if the Board of Directors or its designee finds that:

(1) The act, violation or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act, violation or

practice committed within any state, territory, or possession of the United States or the District of Columbia which act, violation or practice, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act, violation or practice, if proven, would adversely affect the insurance risk of the FDIC.

§ 308.129 Notice to state supervisory authority.

The Board of Directors or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to subpart G of this part, and the grounds thereof. Any proceedings shall be conducted according to subpart G of this part, unless, within the time period specified in such notification, the state supervisory authority has effected satisfactory corrective action. No insured institution or other party who is the subject of any notice or order issued by the FDIC under this section shall have standing to raise the requirements of this subpart as grounds for attacking the validity of any such notice or order.

§ 308.130 Effective date of order and service on bank.

(a) *Effective date.* A cease-and-desist order issued by the Board of Directors after a hearing, and a cease-and-desist order issued based upon a default, shall become effective at the expiration of 30 days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors or its designee or by a reviewing court.

(b) *Service on banks.* In cases where the bank is not the respondent, the cease-and-desist order shall also be served upon the bank.

§ 308.131 Temporary cease-and-desist order.

(a) *Issuance.* (1) When the Board of Directors or its designee determines that the violation, or the unsafe or unsound practice, as specified in the notice, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the bank, or is likely to weaken the condition of the bank or otherwise prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the FDIA and § 308.128 of this subpart, the

Board of Directors or its designee may issue a temporary order requiring the bank or an institution-affiliated party to immediately cease and desist from any such violation, practice or to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of the proceedings under section 8(b) of the FDIA.

(2) When the Board of Directors or its designee issues a Notice of charges pursuant to 12 U.S.C. 1818(b)(1) which specifies on the basis of particular facts and circumstances that a bank's books and records are so incomplete or inaccurate that the FDIC is unable, through the normal supervisory process, to determine the financial condition of the bank or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of the bank, then the Board of Directors or its designee may issue a temporary order requiring:

(i) The cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) Affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under section 8(b) of the FDIA.

(3) The temporary order shall be served upon the bank or the institution-affiliated party named therein and shall also be served upon the bank in the case where the temporary order applies only to an institution-affiliated party.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or the institution-affiliated party. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the FDIA, the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the FDIA and entry of an order which has become final, or with respect to paragraph (a)(2) of this section the FDIC determines by examination or otherwise that the bank's books and records are accurate and reflect the financial condition of the bank.

(c) *Uniform Rules do not apply.* The Uniform Rules and subpart B of the Local Rules shall not apply to the issuance of temporary orders under this section.

Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Money Penalties for Violation of Cease-and-Desist Orders and of Certain Federal Statutes, Including Call Report Penalties

§ 308.132 Assessment of penalties.

(a) *Scope.* The rules and procedures of this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings to assess and collect civil money penalties, including civil money penalties for violation of section 7(a) of the FDIA (12 U.S.C. 1817(a)).

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board of Directors or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* (1) The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the FDIA (12 U.S.C. 1818(i)), and § 308.01(e)(1) of the Uniform Rules.

(2) The Board of Directors or its designee may assess civil penalties pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) as follows:

(i) *Late filing—Tier One Penalties.* In cases in which a bank fails to make or publish its Report of Condition and Income ("Call Report") within the appropriate time periods, the Board of Directors or its designee may assess a civil money penalty of not more than \$2,000 per day where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the bank inadvertently transmitted a Call Report which is minimally late.

(A) *First offense.* Generally, in such cases, the amount assessed shall be \$300 per day for each of the first 15 days for which the failure continues, and \$600 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than \$25,000,000 in assets, the amount assessed shall be the greater of \$100 per day or 1/1000th of the bank's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and \$200 or 1/500th of the bank's total assets, 1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Second offense.* Where the bank has been delinquent in making or publishing its Call Report within the

preceding five quarters, the amount assessed for the most current failure shall generally be \$500 per day for each of the first 15 days for which the failure continues, and \$1000 per day for each subsequent day the failure continues, beginning on the sixteenth day. For banks with less than \$25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the bank's total assets.

(C) *Mitigating factors.* The amounts set forth in paragraph (c)(2)(i)(A) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

(D) *Lengthy or repeated violations.* The amounts set forth in paragraph (c)(2)(i) of this section will be assessed on a case-by-case basis where the amount of time of the bank's delinquency is lengthy or the bank has been delinquent repeatedly in making or publishing its Call Reports.

(E) *Waiver.* Absent extraordinary circumstances outside the control of the bank, penalties assessed for late filing shall not be waived.

(ii) *Late filing—Tier Two penalties.* Where a bank fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than \$20,000 per day for each day the failure continues.

(iii) *False or misleading reports or information—(A) Tier One penalties.* In cases in which a bank submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than \$2,000 per day for each day the information is not corrected, where the bank maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the bank inadvertently transmits a Call Report or information which is false or misleading.

(B) *Tier Two penalties.* Where a bank submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than \$20,000 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where a bank knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the

lesser of \$1,000,000 or 1 percent of the bank's total assets per day for each day the information is not corrected.

(D) *Mitigating factors.* The amounts set forth in paragraph (c)(2) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

§ 308.133 Effective date of, and payment under, an order to pay.

(a) *Effective date.* (1) Unless otherwise provided in the Notice, except in situations covered by paragraph (a)(2) of this section, civil penalties assessed pursuant to this subpart are due and payable 60 days after the Notice is served upon the respondent.

(2) If the respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable 60 days after an order to pay, issued after the hearing or upon default, is served upon the respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

(b) *Payment.* All penalties collected under this section shall be paid over to the Treasury of the United States.

Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

§ 308.134 Scope.

The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings by the Board of Directors or its designee:

(a) To censure, limit the activities of, suspend, or revoke the registration of, any municipal securities dealer for which the FDIC is the appropriate regulatory agency;

(b) To censure, suspend, or bar from being associated with such a municipal securities dealer, any person associated with such a municipal securities dealer; and

(c) To deny registration, to censure limit the activities of, suspend, or revoke the registration of, any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency. This subpart and the Uniform Rules shall not apply to proceedings to postpone or suspend registration of a transfer agent or clearing agency pending final determination of denial or revocation of registration.

§ 308.135 Grounds for imposition of sanctions.

(a) *Action under section 15(b)(4) of the Exchange Act.* The Board of Directors or its designee may issue and have served upon any municipal securities dealer for which the FDIC is the appropriate regulatory agency, or any person associated or seeking to become associated with a municipal securities dealer for which the FDIC is the appropriate regulatory agency, a written notice of its intention to censure, limit the activities or functions or operations of, suspend, or revoke the registration of, such municipal securities dealer, or to censure, suspend, or bar the person from being associated with the municipal securities dealer, when the Board of Directors or its designee determines:

(1) That such municipal securities dealer or such person—

(i) has committed any prohibited act or omitted any required act specified in subparagraph (A), (D), or (E) of section 15(b)(4) of the Exchange Act, as amended (15 U.S.C. 78o);

(ii) has been convicted of any offense specified in section 15(b)(4)(B) of the Exchange Act within ten years of commencement of proceedings under this subpart; or

(iii) is enjoined from any act, conduct, or practice specified in section 15(b)(4)(c) of the Exchange Act; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (a) of this section.

(b) *Action under sections 17 and 17A of the Exchange Act.* The Board of Directors or its designee may issue, and have served upon any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to deny registration to, censure, place limitations on the activities or function or operations of, suspend, or revoke the registration of, the transfer agent or clearing agency, when the Board of Directors or its designee determines:

(1) That the transfer agent or clearing agency has willfully violated, or is unable to comply with, any applicable provision of section 17 or 17A of the Exchange Act, as amended, or any applicable rule or regulation issued pursuant thereto; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (b) of this section.

§ 308.136 Notice to and consultation with the Securities and Exchange Commission.

Before initiating any proceedings under § 308.135, the FDIC shall:

(a) Notify the Securities and Exchange Commission of the identity of the

municipal securities dealer or associated person against whom proceedings are to be initiated, and the nature of and basis for the proposed action; and (b) Consult with the Commission concerning the effect of the proposed action on the protection of investors and the possibility of coordinating the action with any proceeding by the Commission against the municipal securities dealer or associated person.

§ 308.137 Effective date of order imposing sanctions.

An order issued by the Board of Directors after a hearing or an order issued upon default shall become effective at the expiration of 30 days after the service of the order, except that an order of censure, denial, or revocation of registration is effective when served. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors, its designee, or a reviewing court, provided that orders of suspension shall continue in effect no longer than 12 months.

Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

§ 308.138 Scope.

The rules and procedures of this subpart J shall apply to proceedings by the Board of Directors or its designee to exempt, in whole or in part, an issuer of securities from the provisions of sections 12(g), 13, 14(a), 14(c), 14(d), or 14(f) of the Exchange Act, as amended (15 U.S.C. 78i, 78m, 78n (a), (c), (d) or (f)), or to exempt an officer of a director or beneficial owner of securities of such an issuer from the provisions of section 16 of the Exchange Act (15 U.S.C. 78p).

§ 308.139 Application for exemption.

Any interested person may file a written application for an exemption under this subpart with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

§ 308.140 Newspaper notice.

(a) *General rule.* If the Board of Directors or its designee, in its sole discretion, decides to further consider

an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary or such other person as may be directed in the instructions.

(b) *Contents.* The notification shall contain the name and address of the issuer and the name and title of the applicant, the exemption sought, a statement that a hearing will be held, and a statement that within 30 days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard. The address of the FDIC must appear in the notice.

§ 308.141 Notice of hearing.

Within ten days after expiration of the period for receipt of comments pursuant to § 308.140, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than 30 days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

§ 308.142 Hearing.

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the APA (5 U.S.C. 554-557), the Uniform Rules and § 308.108 of subpart B of the Local Rules shall not apply to hearings under this subpart.

(b) *Hearing procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) There shall be no discovery in proceeding under this subpart J.

(3) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(4) The proceedings shall be on the record and the transcript shall be

promptly submitted to the Board of Directors. The presiding officer shall make recommendations to the Board of Directors, unless the Board of Directors, in its sole discretion, directs otherwise.

§ 308.143 Decision of Board of Directors.

Following submission of the hearing transcript to the Board of Directors, the Board of Directors may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the Act

§ 308.144 Scope.

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured depository institution, any institutions making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the FDIA (12 U.S.C. section 1820(c)). The Uniform Rules and subpart B of the Local Rules shall not apply to investigations under this subpart.

§ 308.145 Conduct of investigation.

An investigation conducted pursuant to section 10(c) of the FDIA shall be initiated only upon issuance of an order by the Board of Directors; or by the General Counsel, the Director of the Division of Supervision, the Director of the Division of Liquidation, or their respective designees as set forth at § 303.9 of this chapter. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

§ 308.146 Powers of person conducting investigation.

The person designated to conduct a section 10(c) investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board of Directors any instance where any attorney has been guilty of contemptuous conduct. The Board of Directors, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

§ 308.147 Investigations confidential.

Investigations conducted pursuant to section 10(c) shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in part 309 of this chapter and as otherwise required by law.

§ 308.148 Rights of witnesses.

In an investigation pursuant to section 10(c):

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown and provided with a copy of the order initiating the proceeding;

(b) Any person compelled or requested to provide testimony as a witness or to furnish documentary evidence may be represented by a counsel who meets the requirements of § 308.06 of the Uniform Rules. That counsel may be present and may:

(1) Advise the witness before, during, and after such testimony;

(2) Briefly question the witness at the conclusion of such testimony for clarification purposes; and

(3) Make summary notes during such testimony solely for the use and benefit of the witness;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation;

(d) In cases of a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of multiple witnesses, the person conducting the investigation may require the attorney to comply with the provisions of § 308.08 of the Uniform Rules; and

(e) Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

§ 308.149 Service of subpoena.

Service of a subpoena shall be accomplished in accordance with § 308.11 of the Uniform Rules.

§ 308.150 Transcripts.

(a) *General rule.* Transcripts of testimony, if any, in an investigation pursuant to section 10(c) shall be recorded by an official reporter, or by any other person or means designated by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

(b) *Subscription by witness.* The transcript of testimony shall be subscribed by the witness, unless the person conducting the investigation and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the transcript of the testimony is not subscribed by the witness, the official reporter taking the testimony shall certify that the transcript is a true and complete transcript of the testimony.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer or Director Pursuant to Section 32 of the FDIA

§ 308.151 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a state nonmember bank pursuant to section 32 of the FDIA (12 U.S.C. 1831i) for the consent of the FDIC to add to or replace an individual on the board of directors, or to employ any

individual as a senior executive officer, or change the responsibilities of any individual to a position of senior executive officer where the bank:

(a) Has been chartered and operating as an insured nonmember bank for less than two years or the insured state branch has been licensed and operating as an insured branch for less than two years;

(b) Has undergone a change in control within the preceding two years; or

(c) Is not in compliance with the minimum capital requirement applicable to it or is otherwise in a troubled condition as determined by the FDIC on the basis of such institution's most recent report of condition or report of examination or inspection.

§ 308.152 Grounds for disapproval of notice.

The Board of Directors or its designee may issue a notice of disapproval with respect to a notice submitted by a state nonmember bank pursuant to section 32 of the FDIA (12 U.S.C. 1831i) where:

(a) The competence, experience, character, or integrity of the individual with respect to whom such notice submitted indicates that it would not be in the best interests of the depositors of the state nonmember bank to permit the individual to be employed by or associated with such bank; or

(b) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicated that it would not be in the best interests of the public to permit the individual to be employed by, or associated with, the state nonmember bank.

§ 308.153 Procedures where notice of disapproval issues pursuant to § 303.14 of this chapter.

(a) The Notice of Disapproval shall be served upon the insured state nonmember bank and the candidate for director or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant considerations specified in § 308.152;

(2) Inform the individual and the bank that a request for review of the disapproval may be filed within fifteen days of receipt of the Notice of Disapproval; and

(3) Specify that additional information, if any, must be contained in the request for review.

(b) The request for review must be filed at the appropriate regional office.

(c) The request for review must be in writing and should:

(1) Specify the reasons why the FDIC should reconsider its disapproval; and

(2) Set forth relevant, substantive and material documents, if any, that for good cause were not previously set forth in the notice required to be filed pursuant to section 32 of the FDIA.

§ 308.154 Decision on review.

(a) Within 30 days of receipt of the request for review, the Board of Director or its designee, shall notify the bank and/or the individual filing the reconsideration (hereafter "petitioner") of the FDIC's decision on review.

(b) If the decision is to grant the review and approve the notice, the bank and the individual involved shall be so notified.

(c) A denial of the request for review pursuant to section 32 of the FDIA shall:

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefor, may be filed with the Executive Secretary within 15 days after the receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in § 308.152.

(d) If a decision is not rendered within 30 days, the petitioner may file a request for a hearing within fifteen days from the date of expiration.

§ 308.155 Hearing.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for a hearing filed pursuant to § 308.154. Upon request of the petitioner or the FDIC, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The ultimate burden of proof shall be upon the candidate for director or senior executive officer. The burden of going forward with a prima facie case shall be upon the FDIC.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, D.C. or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.100 through 308.102, and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The petitioner may appear at the hearing and shall have the right to introduce relevant and material documents and make an oral presentation. Members of the FDIC enforcement staff may attend the hearing and participate as a representative of the FDIC enforcement staff.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the petitioner afforded the hearing.

(6) In the course of or in connection with any hearing under paragraph (c) of this section the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors or its designee, where possible, within fifteen days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The petitioner may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a

hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect.

(f) *Decision by Board of Directors or its designee.* Within 45 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the petitioner. The Board of Directors or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the FDIA

§ 308.156 Scope.

The rules and procedures set forth in this subpart shall apply to an application filed pursuant to section 19 of the FDIA (12 U.S.C. 1829) by an insured depository institution and a person, who has been convicted of any criminal offense involving dishonesty or a breach of trust or who has agreed to enter into a pretrial diversion or similar program in connection with the prosecution of such offense, to seek the prior written consent of the FDIC to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution.

§ 308.157 Relevant considerations.

(a) In proceedings under § 308.156 on an application to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution, the following shall be considered:

(1) Whether the conviction is for a criminal offense involving dishonesty or breach of trust;

(2) Whether participation directly or indirectly by the person in any manner in the conduct of the affairs of the insured depository institution constitutes a threat to the safety or soundness of the insured depository institution or the interests of its depositors, or threatens to impair public

confidence in the insured depository institution;

(3) Evidence of the applicant's rehabilitation;

(4) The position to be held by the applicant;

(5) The amount of influence and control the applicant will be able to exercise over the affairs and operations of the insured depository institution;

(6) The ability of the management at the insured depository institution to supervise and control the activities of the applicant;

(7) The level of ownership which the applicant will have at the insured depository institution;

(8) Applicable fidelity bond coverage for the applicant; and

(9) Additional factors in the specific case that appear relevant.

(b) The question of whether a person, who was convicted of a crime or who agreed to enter a pretrial diversion or similar program, was guilty of that crime shall not be at issue in a proceeding under this subpart.

§ 308.158 Filing papers and effective date.

(a) *Filing with the regional office.* Applications pursuant to section 19 shall be filed in the appropriate regional office.

(b) *Effective date.* An application pursuant to section 19 may be made in writing at any time more than one year after the issuance of a decision denying an application pursuant to section 19. The removal and/or prohibition pursuant to section 19 shall continue until the applicant has been reinstated by the Board of Directors or its designee for good cause shown.

§ 308.159 Denial of applications.

A denial of an application pursuant to section 19 shall:

(a) Inform the applicant that a written request for a hearing, stating the relief desired and the grounds therefor and any supporting evidence, may be filed with the Executive Secretary within 60 days after the denial; and

(b) Summarize or cite the relevant considerations specified in § 308.157 of this subpart.

§ 308.160 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 60 days after receipt of a request for hearing on an application filed pursuant to § 308.159. Upon the request of the applicant or FDIC enforcement counsel, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Burden of proof.* The ultimate burden of proof shall be upon the person proposing to become or continue as an institution-affiliated party with respect to an insured depository institution; to own or control directly or indirectly an insured depository institution; or to participate directly or indirectly in any manner in the conduct of the affairs of an insured depository institution. The burden of going forward with *prima facie* case shall be upon the FDIC.

(c) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform Rules and §§ 308.100 through 308.102 and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or FDIC enforcement staff, the record shall

remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within 20 days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors or its designee. The Executive Secretary's certification shall close the record.

(d) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(e) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the person shall remain barred under section 19.

(f) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected person whether the person shall remain barred under section 19. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant.

Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony is Charged

§ 308.161 Scope.

The rules and procedures set forth in this subpart shall apply to the following proceedings:

(a) To suspend an institution-affiliated party of an insured state nonmember bank, or to prohibit such party from further participation in the conduct of the affairs of the bank, where the individual is charged in any state, Federal, or territorial information or indictment, or complaint, with the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or Federal law; or

(b) To remove from office or to prohibit an institution-affiliated party from further participation in the conduct of the affairs of the bank, except with

the consent of the Board of Directors or its designee, if continued service or participation by such party poses a threat to the interests of the bank's depositors or threatens to impair public confidence in the depository institution, where a judgment of conviction or an agreement to enter a pre-trial diversion or other similar program is entered against such party, not subject to further appellate review, has been entered against the individual for the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or Federal law.

§ 308.162 Relevant considerations.

(a)(1) In proceedings under § 308.161 (a) and (b) for a suspension, removal or prohibition order, the following shall be considered:

(i) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust; and

(ii) Whether continued service or participation by the institution-affiliated party may pose a threat to the interest of the bank's depositors, or threatens to impair public confidence in the bank.

(2) Additional factors in the specific case that appear relevant to its decision to continue in effect, rescind, terminate, or modify a suspension, removal or prohibition order may be considered.

(b) The question of whether an institution-affiliated party charged with a crime is guilty of the crime charged shall not be tried or considered in a proceeding under this subpart.

§ 308.163 Notice of suspension, and orders of removal or prohibition.

(a) *Notice of suspension or prohibition.* (1) The Board of Directors or its designee may suspend or prohibit from further participation in the conduct of the affairs of the bank an institution-affiliated party by written notice of suspension or prohibition upon a determination by the Board of Directors or its designee that the grounds for such suspension or prohibition exist. The written notice of suspension or prohibition shall be served upon the institution-affiliated party and the bank.

(2) The written notice of suspension shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefore, and any supporting evidence, may be filed with the

Executive Secretary within 30 days after receipt of the written notice; and

(ii) Summarize or cite to the relevant considerations specified in § 308.162 of this subpart.

(3) The suspension or prohibition shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

(b) *Order of removal or prohibition.*

(1) The Board of Directors or its designee may issue an order removing or prohibiting from further participation in the conduct of the affairs of the bank an institution-affiliated party, when:

(i) A final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.161(b); and

(ii) The Board of Directors or its designee determines that continued service or participation of the institution-affiliated party may threaten the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(2) The order shall be served upon the institution-affiliated party and the bank.

(3) The order shall:

(i) Inform the institution-affiliated party that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within 30 days after receipt of the order; and

(ii) Summarize or cite the relevant considerations specified in § 308.162 of this subpart.

(4) The order shall be effective immediately upon service on the institution-affiliated party, and shall remain in effect until it is terminated by the Board of Directors or its designee under the provisions of § 308.164 or otherwise.

§ 308.164 Hearings.

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within 30 days after receipt of a request for hearing on an application filed pursuant to § 308.163. Upon the request of the applicant, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.06 through 308.12, 308.16, and 308.21 of the Uniform

Rules and §§ 308.100 through 308.102 and 308.104 through 308.106 of subpart B of the Local Rules shall apply to hearings held pursuant to this subpart.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a representative of the FDIC enforcement staff.

(4) There shall be no discovery in proceedings under this subpart.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under paragraph (b) of this section, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.14 of the Uniform Rules.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board of Directors, where possible, within ten days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board of Directors. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The applicant or the bank may

in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect pursuant to § 308.163.

(e) *Decision by Board of Directors or its designee.* Within 60 days following the Executive Secretary's certification of the record to the Board of Directors or its designee, the Board of Directors or its designee shall notify the affected individual whether the order of removal or prohibition will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board of Directors or its designee that is adverse to the applicant. The Board of Directors or its designee shall promptly rescind or modify an order of removal or prohibition where the decision is favorable to the applicant.

Subpart O—Liability of Commonly Controlled Depository Institutions

§ 308.165 Scope.

The rules and procedures in this subpart, subpart B of the Local Rules and the Uniform Rules shall apply to proceedings in connection with the assessment of cross-guaranty liability against commonly controlled depository institutions.

§ 308.166 Grounds for assessment of liability.

Any insured depository institution shall be liable for any loss incurred or reasonably anticipated to be incurred by the corporation, subsequent to August 9, 1989, in connection with the default of a commonly controlled insured depository institution, or any loss incurred or reasonably anticipated to be incurred in connection with any assistance provided by the Corporation to any commonly controlled depository institution in danger of default.

§ 308.167 Notice of assessment of liability.

(a) The amount of liability shall be assessed upon service of a Notice of Assessment of Liability upon the liable depository institution, within two years of the date the Corporation incurred the loss.

(b) *Contents of Notice.* (1) The Notice of Assessment of Liability shall set forth:

(i) The basis for the FDIC's jurisdiction over the proceeding;

(ii) A statement of the Corporation's good faith estimate of the amount of loss it has incurred or anticipates incurring;

(iii) A statement of the method by which the estimated loss was calculated;

(iv) A proposed order directing payment by the liable institution of the FDIC's estimated amount of loss, and the schedule under which the payment will be due;

(v) In cases involving more than one liable institution, the estimated amount of each institution's share of the liability.

(2) The Notice of Assessment of Liability shall advise the liable institution(s):

(i) That an answer must be filed within 20 days after service of the Notice;

(ii) That, if a hearing is requested, a request for a hearing must be filed within 20 days after service of the Notice;

(iii) That if a hearing is requested, such hearing will be held within the judicial district in which the liable institution is found, or, in cases involving more than one liable institution, within a judicial district in which at least one liable institution is found;

(iv) That, unless the administrative law judge sets a different date, the hearing will commence 120 days after service of the Notice of Assessment of Liability;

(v) That failure to file both an answer and request a hearing shall render the Notice of Assessment a final and unappealable order.

§ 308.168 Effective date of and payment under an order to pay.

(a) Unless otherwise provided in the Notice of Assessment of Liability, payment of the assessment shall be due on or before the 21st day after service of the Assessment of Liability, under the terms of the schedule for payment set forth therein.

(b) All payments collected shall be paid to the Corporation.

(c) Failure to both file an answer and request a hearing as prescribed herein shall render the order to pay final and unappealable.

Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and other Expenses

§ 308.169 Scope.

This subpart, and the Equal Access to Justice Act (5 U.S.C. 504), which it implements, apply to adversary

adjudications before the FDIC. The types of adjudication covered by this subpart are those listed in § 308.01 of the Uniform Rules. The Uniform Rules and subpart B of the Local Rules apply to any proceedings to recover fees and expenses under this subpart.

§ 308.170 Filing, content, and service of documents.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Executive Secretary whenever the applicant has prevailed in the proceeding or in a discrete significant substantive portion of the proceeding within 30 days after service of the final order of the Board of Directors in disposition of the proceeding.

(b) *Content.* The application and related documents shall conform to the requirements of § 308.10 of the Uniform Rules.

(c) *Service.* The application and related documents shall be served on all parties to the adversary adjudication in accordance with § 308.11 of the Uniform Rules, except that statements of net worth shall be served only on counsel for the FDIC.

(d) Upon receipt of an application, the Executive Secretary shall refer the matter to the administrative law judge who heard the underlying adversary proceeding, provided that if the original administrative law judge is unavailable, or the Executive Secretary determines, in his or her sole discretion, that there is cause to refer the matter to a different administrative law judge, the matter shall be referred to a different administrative law judge.

§ 308.171 Responses to application.

(a) *By FDIC.* (1) Within 20 days after service of an application, counsel for the FDIC may file with the Executive Secretary and serve on all parties an answer to the application. Unless counsel for the FDIC requests and is granted an extension of time for filing or files a statement of intent to negotiate under § 308.179 of this subpart, failure to file an answer within the 20-day period will be treated as a consent to the award requested.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the FDIC's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 308.180.

(b) *Reply to answer.* The applicant may file a reply if the FDIC has addressed in its answer any of the

following issues: that the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 308.180.

(c) *By other parties.* Any party to the adversary adjudication, other than the applicant and the FDIC, may file comments on an application within 20 days after service of the application. If the applicant is entitled to file a reply to the FDIC's answer under paragraph (b) of this section, another party may file comments on the answer within 15 days after service of the answer. A commenting party may not participate in any further proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit additional exploration of matters raised in the comments.

(d) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

§ 308.172 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named or admitted as a party to the proceeding. In addition, the applicant must show that it meets all other conditions of eligibility set out in paragraph (b) of this section.

(b) *Types of eligible applicant.* The types of eligible applicant are:

(1) An individual with a net worth of not more than \$2,000,000 at the time the adversary adjudication was initiated; or

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed \$7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated.

(c) *Factors to be considered.* In determining the types of eligible applicants:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevails are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for

the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a bank shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the adversary adjudication.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary adjudication was initiated. Part-time employees are included as though they were full-time employees.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant; and corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares. The Board of Directors may, however, on the recommendation of the administrative law judge, or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board of Directors may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(6) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 308.173 Prevailing party.

(a) *General rule.* An eligible applicant who, following an adversary adjudication has gained victory on the merits in the proceeding is a "prevailing party". An eligible applicant may be a "prevailing party" if a settlement of the

proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(b) *Segregation of costs.* When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under § 308.175 if proration were not performed, whether separate or prorated treatment is appropriate, and the appropriate proration percentage, shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 308.174 Standards for awards.

A prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified or special circumstances make the award unjust. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings. Awards for fees and expenses incurred before the date on which the adversary adjudication was initiated are allowable if their incurrence was necessary to prepare for the proceeding.

§ 308.175 Measure of awards.

(a) *General rule.* Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate, provided that no award under this subpart for the fee of an attorney or agent may exceed \$75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FDIC pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness

ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

§ 308.176 Application for awards.

(a) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified;

(3) A statement of the amount of fees and expenses for which an award is sought;

(4) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(5) A description of any affiliated individuals or entities, as defined in § 308.172(c)(5), or a statement that none exist;

(6) A declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.172(b) as of the date the proceeding was initiated; and

(7) Any other matters that the applicant wishes the FDIC to consider in

determining whether and in what amount an award should be made.

(b) *Verification.* The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

§ 308.177 Statement of net worth.

(a) *General rule.* A statement of net worth must be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant.

(b) *Contents.* (1) The statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable unless the administrative law judge or the Board of Directors otherwise requires. Financial statements or reports to a Federal or State agency, prepared before the initiation of the adversary adjudication for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, are acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board of Directors otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 308.172(c)(2). Assets and liabilities of individuals shall include those beneficially owned within the meaning of the FDIC's rules and regulations.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. In all cases the administrative law judge or the Board of Directors may call for additional information needed to establish the applicant's net worth as of the initiation of the proceeding. Except as adjusted by additional information that was called for under the preceding sentence, net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of

mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board of Directors or required by law, the statement of net worth shall be for the confidential use of counsel for the FDIC, the Board of Directors, and the administrative law judge.

§ 308.178 Statement of fees and expenses.

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board of Directors may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 308.179 Settlement negotiations.

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Executive Secretary a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.171 for an additional 20 days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

§ 308.180 Further proceedings.

(a) *General rule.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or the FDIC, or on his or her own initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the

application and will be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* Ordinarily, the administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

§ 308.181 Recommended decision.

The administrative law judge shall file with the Executive Secretary a recommended decision on the fee application not later than 90 days after the filing of the application or 30 days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

§ 308.182 Board of Directors action.

(a) *Exceptions to recommended decision.* Within 20 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the Executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board of Directors.* The Board of Directors shall render its decision within 60 days after the matter is submitted to it by the Executive Secretary. The Executive Secretary shall furnish copies of the decision and order of the Board of Directors to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 308.183 Payment of awards.

An applicant seeking payment of an award made by the Board of Directors shall submit to the executive Secretary a

statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within 30 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Dated: June 5, 1991.

Hoyle L. Robinson,
Executive Secretary.

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Parts 508, 509, 512 AND 513

List of Subjects

12 CFR Part 508

Administrative practice and procedure, Crime, Savings associations.

12 CFR Part 509

Administrative practice and procedure, Penalties..

12 CFR Part 512

Administrative practice and procedure, Investigations.

12 CFR Part 513

Accountants, Administrative practice and procedure, Lawyers.

Authority and Issuance

For the reasons set forth in the common preamble, Parts 508, 509, 512, and 513 of subchapter A of chapter V of title 12 of the Code of Federal Regulations are amended as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

1. The authority citation for part 509 continues to read as follows:

Authority: Sec. 556, 80 Stat. 386, as amended (5 U.S.C. 556); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 373, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 781).

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

- Sec.
- 509.1 Scope.
 - 509.2 Rules of construction.
 - 509.3 Definitions.
 - 509.4 Authority of Agency Head.
 - 509.5 Authority of the administrative law judge.
 - 509.6 Appearance and practice in adjudicatory proceedings.
 - 509.7 Good faith certification.
 - 509.8 Conflicts of interest.
 - 509.9 Ex parte communications.
 - 509.10 Filing of papers.
 - 509.11 Service of papers.
 - 509.12 Construction of time limits.
 - 509.13 Change of time limits.
 - 509.14 Witness fees and expenses.
 - 509.15 Opportunity for informal settlement.
 - 509.16 Agency's right to conduct examination.
 - 509.17 Collateral attacks on adjudicatory proceeding.
 - 509.18 Commencement of proceeding and contents of notice.
 - 509.19 Answer.
 - 509.20 Amended pleadings.
 - 509.21 Failure to appear.
 - 509.22 Consolidation and severance of actions.
 - 509.23 Motions.
 - 509.24 Scope of document discovery.
 - 509.25 Request for document discovery from parties.
 - 509.26 Document subpoenas to nonparties.
 - 509.27 Deposition of witness unavailable for hearing.
 - 509.28 Interlocutory review.
 - 509.29 Summary disposition.
 - 509.30 Partial summary disposition.
 - 509.31 Scheduling and prehearing conferences.
 - 509.32 Prehearing submissions.
 - 509.33 Public hearings.
 - 509.34 Hearing subpoenas.
 - 509.35 Conduct of hearings.
 - 509.36 Evidence.
 - 509.37 Proposed findings and conclusions.
 - 509.38 Recommended decision and filing of record.
 - 509.39 Exceptions to recommended decision.
 - 509.40 Review by Agency Head.
 - 509.41 Stays pending judicial review.
3. Subpart B is revised to read as follows:

Subpart B—Local Rules

- 509.100 Scope.
- 509.101 Appointment of Office of Financial Institution Adjudication.
- 509.102 Discovery.
- 509.103 Civil money penalties.
- 509.104 Additional procedures.

§ 509.100 Scope.

The rules and procedures in this subpart B shall apply to those proceedings covered by subpart A of this part. In addition, subpart A of this part and this subpart shall apply to adjudicatory proceedings for which hearings on the record are provided for by the following statutory provisions:

(a) Proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company;

(b) Proceedings under section 10(g)(5)(A) of the HOLA (12 U.S.C. 1467a(g)(5)(A)) to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary; and

(c) Proceedings under section 15(c)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(c)(4)) ("Exchange Act") to determine whether any association or person subject to the jurisdiction of the Agency pursuant to section 12(i) of the Exchange Act (15 U.S.C. 78(i)) has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d) or 14(f) of the Exchange Act.

§ 509.101 Appointment of Office of Financial Institution Adjudication.

Unless otherwise directed by the Agency, all hearings under subpart A of this part and this subpart shall be conducted by administrative law judges under the direction of the Office of Financial Institution Adjudication.

§ 509.102 Discovery.

(a) *In general.* A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant and material matters of which the witness has factual, direct and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for objection. Failure to object to questions or exhibits

is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, investigative, trial preparation, irrelevant or immaterial matters; or

(3) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent.

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States Government is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

(g) *Deposition subpoenas—(1) Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(2) *Service.* The party requesting the subpoena shall serve it on the person named therein, or on that person's counsel, by personal service, certified mail, or overnight delivery service. The party serving the subpoena shall file proof of service with the administrative law judge.

(3) *Motion to quash.* A person named in the subpoena or a party may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party that requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(4) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 509.27(d).

§ 509.103 Civil money penalties.

(a) *In general.* Notwithstanding the use of the term "penalty," civil money penalties assessed pursuant to subpart A of this part or this subpart B are remedial and not punitive in nature.

(b) *Assessment.* In the event of consent, or if upon the record developed at the hearing the Agency finds that any of the grounds specified in the notice issued pursuant to § 509.18 have been established, the Agency may serve an order of assessment of civil money penalty upon the party concerned. The assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Agency or by a reviewing court.

(c) *Payment.* (1) Civil penalties assessed pursuant to subpart A of this part and this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Agency fixes a different time for payment where it determines that the purpose of the civil money penalty would be better served thereby; however, if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party may not be required to pay such penalty until the Agency has issued a final order of assessment following the hearing. In such instances, the penalty shall be paid within 60 days of service of such order unless the Agency fixes a different time for payment. Notwithstanding the foregoing, the Agency may seek to attach the party's assets to secure payment of the potential civil money penalty or other obligation in advance of the hearing in accordance with section 8(i)(4) of the FDIA (12 U.S.C. 1818(i)(4)).

(2) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Agency. Upon receipt, the Office shall forward the check to the Treasury of the United States.

(d) *Relevant considerations.* In determining the amount of the penalty to be assessed in any proceeding under subpart A or this subpart, the Agency shall consider the financial strength and good faith of the party against whom the penalty is assessed, the gravity of the violation, any previous violations, and such other matters as justice may require.

§ 509.104 Additional procedures.

(a) *Replies to exceptions.* Replies to written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order pursuant to § 509.39 shall be filed within 10 days of the date such written exceptions were required to be filed.

(b) *Motions.* All motions shall be filed with the administrative law judge; provided however, once the administrative law judge has certified the record to the Agency pursuant to § 509.39, all motions must be filed with the Agency within the 10 day period allowed for the filing of replies to exceptions. Responses to such motions timely filed before the Agency Head, other than motions for oral argument before the Agency Head, shall be allowed pursuant to the procedures at § 509.23(d). No response is required for the Agency Head to make a determination on a motion for oral argument.

(c) *Authority of administrative law judge.* In addition to the powers listed in § 509.5, the administrative law judge shall have the authority to deny any dispositive motion and shall follow the procedures set forth for motions for summary disposition at § 509.29 and partial summary disposition at § 509.30 in making determinations on such motions.

(d) *Notification of submission of proceeding to Agency Head.* Upon the expiration of the time for filing any exceptions, any replies to such exceptions or any motions and any ruling thereon, and after receipt of certified record, the Agency shall notify the parties within ten days of the submission of the proceeding to the Agency Head for final determination.

(e) *Extensions of time for final determination.* The Director may, *sua sponte*, extend the time for final determination by signing an order of extension of time within the 90 day time period and notifying the parties of such extension thereafter.

(f) *Service upon the Agency.* Service of any document upon the Agency shall be made by filing with the individuals and/or offices designated by the Agency in its Notice issued pursuant to § 509.46(d) or the notification in paragraph (d) of this section or such other means reasonably suited to provide notice of the person and/or office designated to receive filings.

(g) *Presence of electronic media.* Notwithstanding the authority of the administrative law judge to set the time, place and manner of hearings, including the presence of the media and general public, the decision as to the presence of

electronic media shall be reserved to the Agency Head. Any petition to permit electronic media shall be filed with the Agency Head no later than thirty days in advance of the hearing. The Agency Head may decide to grant or deny the petition without soliciting the views of the parties. If the petition is granted, the Agency Head shall promptly serve the administrative law judge and all parties with the determination.

PART 508—[AMENDED]

4. The authority citation for part 508 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 2, 64 Stat. 879, as amended (12 U.S.C. 1818).

§ 508.7 [Amended]

5. Section 508.7(a) is amended by adding "509.5" in place of "509.4".

§ 508.13 [Amended]

6. Section 508.13(b) is amended by adding "509.39" in place of "509.27(b)".

§ 508.14 [Amended]

7. Section 508.14 is amended by revising "509.9, 509.10, 509.11, 509.12, and" to read "509.10, 509.11, and 509.12".

PART 512—[AMENDED]

8. The authority citation for part 512 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 781).

§ 512.7 [Amended]

9. Section 512.7(b) is amended by adding "Chief Counsel or his designee" in place of "Director or any Deputy Director of Enforcement" and "Director or the Deputy Director", each place they appear.

PART 513—[AMENDED]

10. The authority citation for part 513 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 12, sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); 48 Stat. 892, as amended (15 U.S.C. 781).

§ 513.1 [Amended]

11. Section 513.1 is amended in the last sentence by adding "509.6(a)(1)" in place of "509.5(a)(2)".

§ 513.5 [Amended]

12. Section 513.5(b) is amended by adding "508.3" and "508.7" in place of "509a.3" and "509a.7", respectively.

Dated: June 6, 1991.

Timothy Ryan,
Director.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, Claims, Credit unions, Equal Access to Justice, Hearing procedures, Investigations, Lawyers, Penalties.

Authority and Issuance

For the reasons set forth in the common preamble, part 747 of chapter VII of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787.

2. Subpart A is revised to read as set forth at the end of the common preamble.

Subpart A—Uniform Rules of Practice and Procedure

Sec.

- 747.1 Scope.
- 747.2 Rules of construction.
- 747.3 Definitions.
- 747.4 Authority of Agency Head.
- 747.5 Authority of the administrative law judge.
- 747.6 Appearance and practice in adjudicatory proceedings.
- 747.7 Good faith certification.
- 747.8 Conflicts of interest.
- 747.9 Ex parte communications.
- 747.10 Filing of papers.
- 747.11 Service of papers.
- 747.12 Construction of time limits.
- 747.13 Change of time limits.
- 747.14 Witness fees and expenses.
- 747.15 Opportunity for informal settlement.
- 747.16 Agency's right to conduct examination.
- 747.17 Collateral attacks on adjudicatory proceeding.
- 747.18 Commencement of proceeding and contents of notice.
- 747.19 Answer.
- 747.20 Amended pleadings.
- 747.21 Failure to appear.

Sec.

- 747.22 Consolidation and severance of actions.
- 747.23 Motions.
- 747.24 Scope of document discovery.
- 747.25 Request for document discovery from parties.
- 747.26 Document subpoenas to nonparties.
- 747.27 Deposition of witness unavailable for hearing.
- 747.28 Interlocutory review.
- 747.29 Summary disposition.
- 747.30 Partial summary disposition.
- 747.31 Scheduling and prehearing conferences.
- 747.32 Prehearing submissions.
- 747.33 Public hearings.
- 747.34 Hearing subpoenas.
- 747.35 Conduct of hearings.
- 747.36 Evidence.
- 747.37 Proposed findings and conclusions.
- 747.38 Recommended decision and filing of record.
- 747.39 Exceptions to recommended decision.
- 747.40 Review by Agency Head.
- 747.41 Stays pending judicial review.

3. Section 747.01 (Scope) is redesignated as § 747.0 and revised to read as follows:

§ 747.0 Scope of part 747.

(a) This part describes the various formal and informal adjudicative actions and non-adjudicative proceedings available to the National Credit Union Administration Board ("NCUA Board"), the grounds for those actions and proceedings, and the procedures used in formal and informal hearings related to each available action. As mandated by section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, this part incorporates uniform rules of practice and procedure governing formal adjudications generally, as well as proceedings involving cease-and-desist actions, assessment of civil money penalties, and removal, prohibition and suspension actions. In addition, the Uniform Rules are incorporated in other subparts of this part which provide for formal adjudications. The administrative actions and proceedings described herein, as well as the grounds and hearing procedures for each, are controlled by sections 120(b) (except where the Federal credit union is closed due to insolvency), 202(a)(3), 206, and 304(c)(3) of the FCUA. Should any provision of this part be inconsistent with these or any other provisions of the FCUA, as amended, the FCUA shall control. Judicial enforcement of any action or order described in this part, as well as judicial review thereof, shall be as prescribed under the FCUA (12 U.S.C. 1751 *et seq.*) and the Administrative Procedure Act (5 U.S.C. 500 *et seq.*).

(b) As used in this part, the term insured credit union means any Federal credit union or any state chartered credit union insured under subchapter II of the FCUA unless the context indicates otherwise.

4. Subparts B through G, I, and J are revised and subpart H is amended by revising the subpart heading and adding §§ 747.701 through 747.703 to read as follows:

Subpart B—Local Rules of Practice and Procedure [Reserved]

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

- 747.201 Scope.
- 747.202 Grounds for termination of insurance.
- 747.203 Notice of charges.
- 747.204 Notice of intention to terminate insured status.
- 747.205 Order terminating insured status.
- 747.206 Consent to termination of insured status.
- 747.207 Notice of termination of insured status.
- 747.208 Duties after termination.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

- 747.301 Scope.
- 747.302 Rules of practice; remainder of board of directors.
- 747.303 Notice of suspension or prohibition.
- 747.304 Removal or permanent prohibition.
- 747.305 Effectiveness of suspension or removal until completion of hearing.
- 747.306 Notice of opportunity for hearing.
- 747.307 Hearing.
- 747.308 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.
- 747.309 Decision of the NCUA Board.
- 747.310 Reconsideration by the NCUA Board.
- 747.311 Relevant considerations.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

- 747.401 Scope.
- 747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.
- 747.403 Notice of intent to suspend or revoke charter; notice of suspension.
- 747.404 Notice of hearing.
- 747.405 Issuance of order.
- 747.406 Cancellation of charter.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access To Justice Act in NCUA Board Adjudications

- 747.601 Purpose and scope.

- 747.602 Eligibility of applicants.
- 747.603 Prevailing party.
- 747.604 Standards for award.
- 747.605 Allowable fees and expenses.
- 747.606 Contents of application.
- 747.607 Statement of net worth.
- 747.608 Documentation of fees and expenses.
- 747.609 Filing and service of applications.
- 747.610 Answer to application.
- 747.611 Comments by other parties.
- 747.612 Settlement.
- 747.613 Further proceedings.
- 747.614 Recommended decision.
- 747.615 Decision of the NCUA Board.
- 747.616 Payment of award.

Subpart H—Local Rules and Procedures Applicable to Investigations

- 747.701 Applicability.
- 747.702 Information obtained in investigations.
- 747.703 Authority to conduct investigations.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

- 747.801 Applicability.
- 747.802 Non-public formal investigative proceedings.
- 747.803 Subpoenas.
- 747.804 Oath; false statements.
- 747.805 Self-incrimination; immunity.
- 747.806 Transcripts.
- 747.807 Rights of witnesses.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the FCUA

- 747.901 Scope.
- 747.902 Grounds for disapproval of notice.
- 747.903 Procedures where notice of disapproval issued; reconsideration.
- 747.904 Appeal.
- 747.905 Judicial review.

Subpart B—Local Rules of Practice and Procedure [Reserved]

Subpart C—Local Rules and Procedures Applicable to Proceedings for the Involuntary Termination of Insured Status

§ 747.201 Scope.

Under the authority of section 206(b) of the FCUA, the NCUA Board may terminate the insured status of an insured credit union upon the grounds set forth therein and enumerated in § 747.202. The procedure for terminating the insured status of an insured credit union as therein prescribed will be followed and hearings required thereunder will be conducted in accordance with the rules and procedures set forth in this subpart and subpart A of this part. To the extent any rule or procedure of subpart A of this part is inconsistent with a rule or procedure prescribed in this subpart C, subpart C shall control.

§ 747.202 Grounds for termination of insurance.

The NCUA Board may institute proceedings to terminate the insured status of an insured credit union whenever it determines that an insured credit union—

(1) is engaging or has engaged in unsafe or unsound practices in conducting its business;

(2) is in unsafe or unsound condition to continue as an insured credit union; or

(3) is violating or has violated any applicable law, rule, regulation, order, written condition imposed by the NCUA Board in response to any application or request of the credit union, or any written agreement entered into with the NCUA Board.

§ 747.203 Notice of charges.

(a) Whenever the NCUA Board determines that grounds for termination of insured status exists, it will, for the purpose of securing correction of errant or illegal conditions, serve a notice of charges upon the concerned credit union. This notice will contain a statement describing the unsafe or unsound practices, condition or the relevant violations.

(b) In the case of an insured State-chartered credit union, the NCUA Board shall send a copy of the Notice of Charges to the appropriate State authority, if any, having supervision over the credit union.

§ 747.204 Notice of intention to terminate insured status.

Unless correction of the practices, condition, or violations set forth in the Notice of Charges is made within 120 days after service of such statement, or within a shorter period of not less than 20 days after such service as the NCUA Board may require in any case where it determines that the insurance risk with respect to such credit union could be unduly jeopardized by further delay or as the appropriate State supervisory authority shall require in the case of an insured State-chartered credit union, the Board, if it determines to proceed further, shall give to the credit union not less than 30 days' written notice of its intent to terminate the status of the credit union as an insured credit union. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practices or conditions or violations on which a hearing will be held. Such hearing shall commence not earlier than 30 days nor later than 60 days after the date of service of such notice upon the credit union, unless an

earlier or later date is set by the NCUA Board at the request of the credit union.

§ 747.205 Order terminating insured status.

If, upon the record of the hearing held pursuant to § 747.204, the NCUA Board finds that any unsafe or unsound practice or condition or violation specified in the notice has been established and has not been corrected within the time prescribed under § 747.204, the NCUA Board may issue and serve upon the credit union an order terminating its status as an insured credit union on a date subsequent to the date of such finding and subsequent to the expiration of the time specified in the Notice.

§ 747.206 Consent to termination of insured status.

Unless the credit union appears at the hearing designated in the notice of hearing by a duly authorized representative, it will be deemed to have consented to the termination of its status as an insured credit union. In the event the credit union fails to so appear at such hearing, the administrative law judge shall forthwith report the matter to the NCUA Board and the NCUA Board may thereupon issue an order terminating the credit union's insured status.

§ 747.207 Notice of termination of insured status.

Prior to the effective date of the termination of the insured status of an insured credit union under section 206(b) of the FCUA and at such time as the Board shall specify, the credit union shall mail to each member at his or her last address of record on the books of the credit union, and publish in not less than two issues of a local newspaper of general circulation, notices of the termination of its insured status, and the credit union shall furnish the NCUA Board with proof of publication of such notice. The notice shall be as follows:

Notice

(Date)

1. The status of the _____ as an insured credit union under the provisions of the Federal Credit Union Act, will terminate as of the close of business on the ____ day of _____.

2. Any deposits made by you after that date, either new deposits or additions to existing accounts, will not be insured by the National Credit Union Administration;

3. Accounts in the credit union on the ____ day of _____, up to a maximum of \$100,000 for each member, will continue to be insured, as provided by the Federal Credit Union Act, for one (1) year after the close of business on the ____ day of _____; Provided, however, that any

withdrawals after the close of business on the day of _____, _____; will reduce the insurance coverage by the amount of such withdrawals.

(Name of Credit Union)
(Address)

§ 747.208 Duties after termination.

(a) After the termination of the insured status of any credit union under section 206(b) of the FCUA, insurance of its member accounts to the extent they were insured on the effective date of such termination, less any amounts thereafter withdrawn which reduce the accounts below the amount covered by insurance on the effective date of such termination, shall continue for a period of one year, but no shares issued by the credit union or deposits made after the date of such termination shall be insured by the NCUA Board.

(b) The credit union shall continue to pay premiums to the NCUA Board during such period and the Board shall have the right to examine the credit union from time to time during the period. The credit union shall, in all other respects, be subject to the duties and obligations of an insured credit union during the one year period. If the credit union is closed for liquidation within this period, the Board shall have the same powers and rights with respect to such credit union as in the case of an insured credit union.

Subpart D—Local Rules and Procedures Applicable to Suspensions and Prohibitions Where Felony Charged

§ 747.301 Scope.

The rules and procedures set forth in this subpart are applicable to informal proceedings conducted by the NCUA Board, or a Presiding Officer designated by the Board, pursuant to section 206(i) of the FCUA to suspend, remove, and/or prohibit from office or from further participation any institution-affiliated party of an insured credit union when such a party is charged in, or convicted as a result of, or enters a pretrial diversion or other similar program as a result of, any state, Federal or territorial information or indictment or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law. Subpart A of this part does not apply to proceedings under this subpart.

§ 747.302 Rules of practice; remainder of board of directors.

Except as otherwise specifically provided in this subpart, the following

provisions shall apply to proceedings conducted under this subpart:

(a)(1) *Power of attorney and notice of appearance.* Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia may represent others before the NCUA Board or Presiding Officer designated by the NCUA Board upon filing with the NCUA Board a written declaration that he or she is currently qualified as provided by this paragraph, and is authorized to represent the particular party on whose behalf he acts. Any other person desiring to appear before or transact business with the NCUA Board in a representative capacity may be required to file with the NCUA Board a power of attorney showing his or her authority to act in such capacity, and he or she may be required to show to the satisfaction of the NCUA Board that he or she has the requisite qualifications. Attorneys and representatives of parties to proceedings shall file a written notice of appearance with the NCUA Board or with the Presiding Officer designated by the NCUA Board.

(2) *Summary suspension.* Contemptuous conduct by any person at an argument before the NCUA Board or at the hearing before a Presiding Officer shall be grounds for exclusion therefrom and suspension for the duration of the argument or hearing.

(b)(1) *Notice of hearing.* Whenever a hearing within the scope of this subpart is ordered by the NCUA Board, a notice of hearing shall be given by the NCUA Board to the party afforded the hearing and to any appropriate state supervisory authority. The notice shall state the time, place, and nature of the hearing and the legal authority and jurisdiction under which the hearing is to be held, and shall contain a statement of the matters of fact or law constituting the grounds for the hearing. It shall be delivered by personal service, by registered or certified mail to the last known address, or by other appropriate means, not later than 30 nor earlier than 60 days before the hearing.

(2) *Party.* The term "party" means a person or agency named or admitted as a party, or any person or agency who has filed a written request and is entitled as of right to be admitted as a party; but a person or agency may be admitted for a limited purpose.

(c)(1) *Computation of time.* In computing any period of time prescribed or allowed by this subpart, the date of the act, event or default from which the designated period of time begins to run is not to be included. The last day so

computed shall be included, unless it is a Saturday, Sunday or legal holiday in the District of Columbia, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor such legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be included in the computation unless the time within which the act is to be performed is ten days or less in which event Saturdays, Sundays, and legal holidays shall not be included.

(2) *Service by mail.* Whenever any party has the right or is required to do some act or take some proceeding, within a period of time prescribed in this subpart, after the service upon him of any document or other paper of any kind, and such service is made by mail, three days shall be added to the prescribed period from the date when the matter served is deposited in the U.S. mail.

(d) *Nonpublication of submissions.* Unless and until otherwise ordered by the NCUA Board, the notice of hearing, the transcript, written materials submitted during the hearing, the Presiding Officer's recommendation to the NCUA Board and any other papers filed in connection with a hearing under this subpart, shall not be made public, and shall be for the confidential use only of the NCUA Board, the Presiding Officer, the parties and appropriate authorities.

(e) *Remainder of board of directors.*

(1) If at any time, because of the suspension of one or more directors pursuant to this subpart, there shall be on the board of directors of an insured credit union less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum on the board of directors.

(2) In the event all of the directors of an insured credit union are suspended pursuant to this subpart, the NCUA Board shall appoint persons to serve temporarily as directors in their place pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the credit union and their respective successors have been elected by the members at an annual or special meeting and have taken office.

(3) Directors appointed temporarily by the NCUA Board pursuant to paragraph (e)(2) of this section, shall, within 30 days following their appointment, call a special meeting for the election of new directors, unless during such 30-day period—

(i) the regular annual meeting is convened; or

(ii) the suspensions giving rise to the appointment of temporary directors are terminated.

§ 747.303 Notice of suspension or prohibition.

Whenever an institution-affiliated party of an insured credit union is charged in any state, Federal or territorial information or indictment or complaint with the commission of or participation in a crime involving dishonesty or breach of trust, which crime is punishable by imprisonment for a term exceeding one year under state or Federal law, the NCUA Board may, if continued service or participation by the concerned party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, by written notice served upon such party, suspend him or her from office, or prohibit him or her from further participation in any manner in the affairs of the credit union, or both. A copy of the notice of suspension or prohibition shall also be served upon the credit union. This suspension or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of, or until such suspension or prohibition is terminated by the NCUA Board.

§ 747.304 Removal or permanent prohibition.

In the event that a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the institution-affiliated party, and at such time as the judgment, if any, is not subject to further appellate review, the NCUA Board may, if continued service or participation by such party may pose a threat to the interests of the credit union's members or may threaten to impair public confidence in the credit union, issue and serve upon the individual an order removing him or her from office or prohibiting him or her from further participation in any manner in the conduct of the affairs of the credit union except with the consent of the NCUA Board. A copy of such order will also be served upon such credit union. A finding of not guilty or other disposition of the charge will not preclude the NCUA Board from thereafter instituting proceedings, pursuant to the provisions of section 206(g) of the FCUA and subpart A of this part, to remove such director, committee member, officer, or other person from office or to prohibit his or her further participation in the affairs of the credit union.

§ 747.305 Effectiveness of suspension or removal until completion of hearing.

Any notice of suspension or prohibition issued under § 747.303 and any order of removal or prohibition issued under § 747.304 will be effective upon service on the concerned party and will remain effective and outstanding until the completion of any hearing or appeal authorized under section 206(i) of the FCUA and this subpart, unless such notice of suspension or order of removal is terminated by the NCUA Board.

§ 747.306 Notice of opportunity for hearing.

(a) Any notice of suspension or prohibition issued pursuant to § 747.303, and any order of removal or prohibition issued pursuant to § 747.304, shall be accompanied by a further notice to the concerned individual that he or she may, within 30 days of service of such notice, request in writing an informal hearing at which he or she may present evidence and argument that his or her continued service to or participation in the conduct of the affairs of the credit union does not, or is not likely to, pose a threat to the interests of the credit union's members or threaten to impair confidence in the credit union. Any notice of the opportunity for such a hearing shall be accompanied by a description of the hearing procedure and the criteria to be considered.

(b) A request for a hearing filed pursuant to paragraph (a) of this section shall state with particularity the relief desired, the grounds therefor, and shall include, when available, supporting evidence. The request and supporting evidence shall be filed in writing with the Secretary of the Board, National Credit Union Administration, Washington, DC 20456.

§ 747.307 Hearing.

(a) Upon receipt of a request for a hearing which complies with § 747.306, the NCUA Board will order an informal hearing to commence within the following 30 days in Washington, DC, or at such other place as the NCUA Board designates, before a Presiding Officer designated by the NCUA Board to conduct the hearing. At the request of the concerned party, the NCUA Board may order the hearing to commence at a time more than 30 days after the receipt of the request for such hearing.

(b) The notice of hearing shall be served by the NCUA Board upon the party or parties afforded the hearing and shall set forth the time and place of the hearing and the name and address of the Presiding Officer.

(c) The subject individual may appear at the hearing personally, through counsel, or personally with counsel. The individual shall have the right to introduce relevant and material written materials (or, at the discretion of the NCUA Board, oral testimony), and to present an oral argument before the Presiding Officer. A member of the enforcement staff of the Office of General Counsel of the NCUA may attend the hearing and may participate as a party. Neither the formal rules of evidence nor the adjudicative procedures of the Administrative Procedure Act (5 U.S.C. 554-557), nor Subpart A of this part shall apply to the hearing. The proceedings shall be recorded and a transcript furnished to the individual upon request and after the payment of the cost thereof. The NCUA Board shall have the discretion to permit the presentation of witnesses, within specified time limits, so long as a list of such witnesses is furnished to the Presiding Officer at least ten days prior to the hearing. Witnesses shall not be sworn, unless specifically requested by either party or directed by the Presiding Officer. The Presiding Officer may examine any witness and each party shall have the opportunity to cross-examine any witness presented by an opposing party. Upon the request of either the subject individual or the representative of the Office of General Counsel, the record shall remain open for a period of five business days following the hearing, during which time the parties may make any additional submissions to the record. Thereafter, the record shall be closed.

(d) In the course of or in connection with any proceeding under this subpart, the NCUA Board and the Presiding Officer will have the power to administer oaths and affirmations, to take or cause depositions to be taken, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. If the NCUA Board permits the presentation of witnesses, the NCUA Board or the Presiding Officer may require the attendance of witnesses from any place in any state or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Witnesses subpoenaed shall be paid the same fees and mileage as are paid witnesses in the District Courts of the United States. The NCUA Board or the Presiding Officer may require the production of documents from any place in any such state, territory, or other place.

(e) The Presiding Officer will make his or her recommendations to the Board,

where possible, within ten business days following the close of the record.

§ 747.308 Waiver of hearing; failure to request hearing or review based on written submissions; failure to appear.

(a) The subject individual may, in writing, waive an oral hearing and instead elect to have the matter determined by the NCUA Board on the basis of written submissions alone.

(b) Should any concerned party fail to request in writing an oral hearing or consideration based on written submissions alone within 30 days of service of the notice described in § 747.306, he or she will be deemed to have consented to the NCUA Board's action.

(c) Unless the concerned party appears at the hearing personally or by duly appointed representative, he or she will be deemed to have consented to the NCUA Board's action.

§ 747.309 Decision of the NCUA Board.

(a) Within 60 days following the hearing, or receipt of the subject individual's written submissions where hearing has been waived pursuant to § 747.308, the NCUA Board shall notify the institution-affiliated party whether the suspension or prohibition will be continued, terminated, or otherwise modified, or whether the order of removal or prohibition will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the decision of the NCUA Board, if that decision is adverse to the respondent party. In the case of a decision favorable to the respondent on the subject of a prior order of removal or prohibition, the NCUA Board shall take prompt action to rescind or otherwise modify the order of removal or prohibition.

§ 747.310 Reconsideration by the NCUA Board.

(a) The subject individual shall have ten business days following receipt of the decision of the NCUA Board in which to petition the NCUA Board for initial reconsideration.

(b) The subject individual also shall be entitled to petition the NCUA Board for reconsideration of its decision any time after the expiration of a 12-month period from the date of the NCUA Board's decision, but no petition for reconsideration may be made within 12 months of a previous petition.

(c) Any petition shall state with particularity the basis for reconsideration, the relief sought, and any exceptions the individual has to the NCUA Board's findings. An individual's petition may be accompanied by a memorandum of points and authorities

in support of his or her petition and any supporting documentation the individual may wish to have considered.

(d) No hearing need be granted on such petition for reconsideration. Promptly following receipt of the petition, the Board shall render its decision.

§ 747.311 Relevant considerations.

In deciding the question of suspension, prohibition, or removal under this subpart, the NCUA Board will consider the following:

(a) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or Federal law, and which involves dishonesty or breach of trust;

(b) Whether the continued presence of the subject individual in his or her position may pose a threat to the interests of the credit union's members because of the nature and extent of the individual's participation in the affairs of the insured credit union and/or the nature of the offense with the commission of or participation in which the individual has been charged;

(c) Whether there is cause to believe that there may be an erosion of public confidence in the integrity, safety, or soundness of a particular credit union (either generally or in the particular locality in which the credit union is situated) if the subject individual is permitted to remain in his or her position in an insured credit union;

(d) Whether the individual is covered by the credit union's fidelity bond and, if so, whether the bond is likely to be revoked, or whether coverage under the bond will be affected adversely as a result of the information, indictment, complaint, judgment of conviction or entry into a pretrial diversion or other similar program; and

(e) The NCUA Board may consider any other factors which, in the specific case, appear relevant to the decision to continue in effect, rescind, terminate, or modify a suspension, prohibition, or removal order, except that it shall not consider the ultimate question of the guilt or innocence of the subject individual with regard to the crime with which he or she has been charged.

Subpart E—Local Rules and Procedures Applicable to Proceedings Relating to the Suspension or Revocation of Charters and to Involuntary Liquidations

§ 747.401 Scope.

The rules and procedures set forth in this subpart and Subpart A of this part

are applicable to proceedings by the NCUA Board pursuant to section 120(b)(1) of the FCUA to suspend or revoke the charter of a solvent Federal credit union, and to place a solvent Federal credit union into involuntary liquidation. To the extent a rule or procedure set forth in Subpart A of this part is inconsistent with a rule or procedure set forth in this subpart E, subpart E shall control.

§ 747.402 Grounds for suspension or revocation of charter and for involuntary liquidation.

(a) *Grounds in general.* The NCUA Board may suspend or revoke the charter of any Federal credit union, and place such credit union into involuntary liquidation and appoint a liquidating agent therefor, upon its finding that the credit union has violated any provision of its charter or bylaws or of the FCUA or regulations issued thereunder.

(b) *Immediate suspension.* In any case where the Board determines that the grounds set forth in paragraph (a) of this section exist and that immediate action is necessary in order to prevent further dissipation of credit union assets or earnings, or further weakening of the credit union's condition, or to otherwise protect the interest of the credit union's insured members or the National Credit Union Share Insurance Fund, it may order without prior notice the immediate suspension of the charter of such credit union, and if the circumstances so warrant, may take possession of all books, records, assets, and property of every description of such credit union.

§ 747.403 Notice of intent to suspend or revoke charter; notice of suspension.

(a) Upon its determination that one or more of the grounds listed in § 747.402(a) exists, or that because of conditions described in § 747.402(b) immediate suspension of charter is necessary, the NCUA Board shall cause to be served upon that credit union a notice of intent to suspend or revoke charter and of intent to place into involuntary liquidation, or a notice of suspension. Such notice shall contain a statement of the facts which constitute the grounds for the action, a recitation of the options available to the credit union under paragraph (b) of this section, and an explanation of the results that will occur if the credit union fails to exercise said options.

(b) Not later than 40 days after the receipt of the notice provided for in paragraph (a) of this section, the Federal credit union may file with the NCUA Board a statement in writing setting forth the grounds and reasons why its charter should not be suspended or

revoked and why it should not be placed into involuntary liquidation; or in lieu of a written statement, request an oral hearing which shall be conducted in accordance with the procedures set forth in this subpart. This statement or request shall be accompanied by a certified copy of a resolution of the board of directors of the Federal credit union concerned authorizing such statement or request, such certification to be made by the president and secretary of the board of directors.

(c) If the Federal credit union concerned does not exercise either alternative available in paragraph (b) of this section within the time required, it shall be deemed to have admitted the facts alleged in the notice and shall be deemed to have consented to the relief sought.

§ 747.404 Notice of hearing.

(a) Upon receipt of a request for hearing which complies with § 747.403(b), the NCUA Board shall transmit the request to the Office of Financial Institution Adjudication ("OFIA"). Such hearing shall commence no earlier than 30 days nor later than 60 days after the date the OFIA receives the request for a hearing, unless an earlier or later date is requested by the Federal credit union concerned and is granted by the NCUA Board in its discretion.

(b) Except as provided in § 747.405(b), the procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and subpart A of this part will apply to the hearing.

(c) Unless the Federal credit union shall appear at such hearing by a duly authorized representative it shall be deemed to have consented to the suspension or revocation of its charter and to the placing of said credit union into involuntary liquidation.

§ 747.405 Issuance of order.

(a) In the event of such consent as referred to in §§ 747.403(c) or 747.404(c), or if upon the record made at any such hearing as referred to in § 747.403(b), the NCUA Board finds that the charter of the Federal credit union concerned should be suspended or revoked and the credit union closed and placed into involuntary liquidation, it shall cause to be served on such credit union an order directing the suspension or revocation of its charter and directing that it be closed and placed into involuntary liquidation. Such order shall contain a statement of the findings upon which the order is based. Additionally, the NCUA Board shall appoint a liquidating agent or agents.

(b) The NCUA Board shall render its decision and cause such order to be served not later than 45 days after receipt of consent, or written submissions as the case may be, or in the case of a formal hearing after service or the notice of submission referred to in § 747.40(a).

(c) Upon the receipt of a copy of the order which provides that the Federal credit union concerned be placed into involuntary liquidation, the officers and directors of that Federal credit union shall immediately deliver to the agent for the liquidating agent possession and control of all books, records, assets, and property of every description of the Federal credit union, and the agent for the liquidating agent shall proceed to convert said assets to cash, collect all debts due to said Federal credit union and to wind up its affairs in accordance with the provisions of the FCUA.

§ 747.406 Cancellation of charter.

Upon the completion of the liquidation and certification by the agent for the liquidating agent that the distribution of the assets of the Federal credit union has been completed, the NCUA Board shall cancel the charter of the Federal credit union concerned.

Subpart F—Local Rules and Procedures Applicable to Proceedings Relating to the Termination of Membership in the Central Liquidity Facility [Reserved]

Subpart G—Local Rules and Procedures Applicable to Recovery of Attorneys Fees and Other Expenses Under the Equal Access to Justice Act in NCUA Board Adjudications

§ 747.601 Purpose and scope.

This subpart contains the regulations of the NCUA implementing the Equal Access to Justice Act (5 U.S.C. 504), as amended ("EAJA"). The EAJA provides for the award of attorneys fees and other expenses to eligible individuals and entities who are parties to proceedings conducted under this part. An eligible party may receive an award when it prevails over NCUA in a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the NCUA was substantially justified or special circumstances make an award unjust. The rules in this subpart describe the parties eligible for fee awards, explain how to apply for awards and the procedures and standards that NCUA will use to make them. To the extent a rule or procedure set forth in subpart A of this part is inconsistent with a rule or

procedure set forth in this subpart G, subpart G will control.

§ 747.602 Eligibility of applicants.

(a) To be eligible for an award of attorneys fees and expenses, an applicant must be a prevailing party in the proceeding for which it seeks an award and must be:

(1) An individual with a net worth of not more than \$2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than \$7 million, including both personal and business interests and not more than 500 employees at the time the proceeding was commenced (an applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests);

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; or

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than \$7 million and not more than 500 employees.

(b) For the purpose of determining eligibility, the net worth of an applicant and the number of employees of an applicant shall be determined as of the date the proceeding was initiated.

(c) The applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(d) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control; part-time employees shall be included on a proportional basis.

(e) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or

other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the NCUA Board determines that such treatment would be unjust and contrary to the purposes of the EAJA in light of the actual relationship between the affiliated entities. In addition, the NCUA Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(f) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be in eligible is not itself eligible for an award.

§ 747.603 Prevailing party.

An eligible applicant may be a "prevailing party" if the applicant wins an action after a full hearing or trial on the merits, if a settlement of the proceeding was effected on terms favorable to it, or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

§ 747.604 Standards for award.

(a) A prevailing party may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, by or against NCUA unless the position of NCUA during the proceeding was substantially justified. The burden of proving that an award should not be made is on counsel for NCUA. To avoid an award, counsel for NCUA must show that its position was reasonable in law and in fact.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(c) Where an applicant has prevailed on one or more discrete substantive issues in a proceeding, even though all the issues were not resolved in its favor, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which

would be recoverable under this section if proration were not performed.

(d) Whether separate or prorated treatment under the preceding paragraph, including the applicable proration percentage, is appropriate shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

§ 747.605 Allowable fees and expenses.

(a) Except as provided by § 747.604(b), awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate.

(b) No award under this subpart for the fee of an attorney or agent may exceed \$75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which NCUA is permitted to pay expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the NCUA Board shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, report, test, project, or similar matter prepared on behalf of the party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

§ 747.606 Contents of application.

(a) A prevailing eligible party, as defined in §§ 747.602, 747.603, and 747.604, seeking an award under this section, must file an application for an award of fees and expenses with the Secretary of the NCUA Board. The application shall include the following information:

(1) The identity of the applicant and the proceeding for which an award is sought;

(2) A showing that the applicant has prevailed and an identification of the issues in the proceeding on which the applicant believes that the position of NCUA was not substantially justified;

(3) A statement, with supporting documentation, that the applicant is an eligible party, as defined by § 747.602. If the applicant is an individual, he or she must state that his or her net worth does not exceed \$2 million. If the applicant is not an individual, it shall state the number of its employees and that its net worth does not exceed \$7 million as of the date the proceeding was initiated. However, an applicant may omit a statement of net worth if:

(i) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(ii) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a));

(4) A Statement of the amount of fees and expenses for which an award is sought; and

(5) Any other matters that the applicant believes may assist or wishes the NCUA Board to consider in determining whether and in what amount an award should be made.

(b) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(c) The application and documentation requirements of this subpart are required by law as a prerequisite to obtaining a benefit under the Equal Access to Justice Act and this subpart.

§ 747.607 Statement of net worth.

(a) Each applicant (other than a qualified tax exempt organization or cooperative association) must provide a detailed statement showing the net worth of the applicant and any affiliates, as defined in § 747.602(a), when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to

determine whether the applicant is an eligible party. The administrative law judge or the NCUA Board may require additional information from the applicant to determine eligibility. Unless otherwise ordered by the Board or required by law, the statement shall be kept confidential and used by the NCUA Board only in making its determination of an award.

(b) If the applicant or any of its affiliates is a Federal credit union, the portion of the statement of net worth which relates to the Federal credit union shall consist of a copy of the Federal credit union's last Statement of Financial Condition filed before the initiation of the underlying proceeding.

(c) All statements of net worth shall describe any transfers of assets from or obligations incurred by the applicant or any affiliate, occurring in the six-month period prior to the date on which the proceeding was initiated, which reduced the net worth of the applicant and its affiliates below the applicable net-worth ceiling. If there were none, the applicant shall so state.

§ 747.608 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, audit, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge or the NCUA Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 747.609 Filing and service of applications.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Board's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision on which an applicant believes it has prevailed, proceedings for the award of fees shall

be stayed pending final disposition of the underlying controversy.

(c) As used in this subpart, final disposition means the issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal.

(d) Any application for an award of fees and expenses shall be filed with the Secretary of the Board, National Credit Union Administration, 1776 G Street, NW, Washington, DC 20456. Any application for an award and any other pleading or document related to an application, shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 747.607(a) for statements of net worth.

§ 747.610 Answer to application.

(a) Within 30 days after service of an application, counsel for NCUA may file an answer to the application. Unless counsel for NCUA requests and is granted an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period will be treated as a consent to the award requested.

(b) If counsel for NCUA and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the NCUA Board upon the joint request of counsel for NCUA and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, counsel shall include with the answer a request for further proceedings under § 747.613.

(d)(1) The applicant may file a reply if counsel for NCUA has addressed in his or her answer any of the following issues:

(i) That the position of NCUA in the proceeding was substantially justified;

(ii) That the applicant unduly protracted the proceedings; or

(iii) That special circumstances make an award unjust.

(2) The reply shall be filed within 15 days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply a request for further proceedings under § 747.613.

§ 747.611 Comments by other parties.

Any party to a proceeding other than the applicant and counsel for NCUA may file comments on an application within 30 days after service of the application or on an answer within 15 days after service of the answer. A commenting party may not participate further in proceedings on the application unless the administrative law judge or the NCUA Board determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 747.612 Settlement.

The applicant and counsel for NCUA may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded, in accordance with NCUA's standard settlement procedure. If a prevailing party and counsel for NCUA agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 747.613 Further proceedings.

(a) After the expiration of the time allowed for the filing of all documents necessary for the determination of a recommended fee award, the NCUA Board shall transmit the entire record to the administrative law judge who presided at the underlying proceeding. Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for NCUA, or on its own initiative, the administrative law judge or the NCUA Board may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the administrative law judge or the NCUA Board order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 747.614 Recommended decision.

The administrative law judge shall file a recommended decision on the application with the NCUA Board within 60 days after completion of the proceedings on the application. The

recommended decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The recommended decision shall also include, if at issue, findings on whether NCUA's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the recommended decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made. The administrative law judge shall file with and certify to the NCUA Board the record of the proceeding on the fee application, the recommended decision and proposed order. Promptly upon such filing, the NCUA Board shall serve upon each party to the proceeding a copy of the administrative law judge's recommended decision, findings, conclusions and proposed order. The provisions of this section and § 747.613 shall not apply, however, in any case where the hearing was held before the NCUA Board.

§ 747.615 Decision of the NCUA Board.

Within 15 days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for NCUA may file with the NCUA Board written exceptions thereto. A supporting brief may also be filed. The NCUA Board shall render its decision within 60 days after the matter is submitted to it. The NCUA Board shall furnish copies of its decision and order to the parties. Judicial review of the NCUA Board's final decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

§ 747.616 Payment of award.

An applicant seeking payment of an award granted by the NCUA Board shall submit to the NCUA's Office of the Controller a copy of the NCUA Board's Final Decision and Order granting the award, accompanied by a statement that it will not seek review of the decision and order in the United States court. All submissions shall be addressed to the Office of the Controller, National Credit Union Administration, 1776 G Street N.W., Washington, D.C. 20456. The NCUA will pay the amount awarded within 60 days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication

has been sought by the applicant or any other party to the proceeding.

Subpart H—Local Rules and Procedures Applicable to Investigations**§ 747.701 Applicability.**

The rules in this subpart apply only to informal and formal investigations conducted by the NCUA Board itself or its delegates. They do not apply to adjudicative or rulemaking proceedings or to routine, periodic or special examinations conducted by the NCUA Board's staff.

§ 747.702 Information obtained in investigations.

Information and documents obtained by the Board in the course of any investigation, unless made a matter of public record by the NCUA Board, shall be deemed non-public, but the NCUA Board approves the practice whereby the General Counsel may engage in, and may authorize any person acting on his or her behalf or at his or her direction to engage in, discussions with representatives of domestic or foreign governmental authorities, self-regulatory organizations, and with receivers, trustees, masters and special counsels or special agents appointed by and subject to the supervision of the courts of the United States, concerning information obtained in individual investigations, including investigations conducted pursuant to any order entered by the NCUA Board or its General Counsel pursuant to delegated authority.

§ 747.703 Authority to conduct investigations.

(a) The General Counsel and persons acting on his or her behalf and at his or her direction may conduct such investigations into the affairs of any insured credit union or institution-affiliated parties as deemed appropriate to determine whether such credit union or party has violated, is violating or is about to violate any provision of the NCUA, the NCUA Board's regulations or other relevant statutes or regulations that may bear on a party's fitness to participate in the affairs of a credit union. The General Counsel and persons acting on his or her behalf may investigate whether any party is unfit to participate in the affairs of a credit union, whether formal enforcement proceedings are warranted, or such other matters as the General Counsel or his or her designee, in his or her discretion, shall deem appropriate. Such investigations may be conducted either informally or formally.

(b) Formal investigations involve the exercise of the NCUA Board's subpoena power and are referred to here as formal investigative proceedings. In formal investigative proceedings, the General Counsel and those to whom he or she delegates authority to act on his or her behalf and at his or her direction have augmented investigatory powers and need not rely on the powers available to them in informal investigations, and they may gather evidence through the issuance of subpoenas compelling the production of documents or testimony as well. In informal investigations evidence may be gathered ordinarily through the use of investigatory procedures or credit union examinations and through voluntary statements and submissions.

(c) The NCUA Board has delegated authority to the General Counsel, or designee thereof, to institute formal investigative proceedings by the entry of an order indicating the purpose of the investigation and the designation of persons to conduct that investigation on his or her behalf and at his or her direction. This delegation also extends to the NCUA Board's role as liquidator and conservator of insured credit unions. The power to issue a subpoena may not be delegated outside the agency. The General Counsel may amend such order as he deems appropriate.

Subpart I—Local Rules Applicable to Formal Investigative Proceedings

§ 747.801 Applicability.

The rules in this subpart are applicable to a witness who is sworn in a formal investigative proceeding. Formal investigative proceedings may be held before the NCUA Board, before one or more of its members, or before any officer designated by the NCUA Board or its General Counsel, as described in subpart H of this part, and with or without the assistance of such other counsel as the NCUA Board deems appropriate, for the purpose of taking testimony of witnesses, conducting an investigation and receiving other evidence. The term "officer conducting the investigation" shall mean any of the foregoing.

§ 747.802 Non-public formal investigative proceedings.

Unless otherwise ordered by the NCUA Board, all formal investigative proceedings shall be non-public.

§ 747.803 Subpoenas.

(a) *Issuance.* In the course of a formal investigative proceeding the officer conducting the investigation may issue a subpoena directing the party named

therein to appear before the officer conducting the investigation at a specified time and place to testify or to produce documentary evidence, or both, relating to any matter under investigation.

(b) *Service.* Service of subpoenas shall be effected in the following manner:

(1) Service upon a natural party. Delivery of a copy of a subpoena to a natural person may be effected by—

- (i) Handing it to the person;
- (ii) Leaving it at his or her office with the person in charge thereof or, if there is no one in charge, by leaving it at a conspicuous place there;
- (iii) Leaving it at his or her dwelling place or usual place of abode with some person of suitable age and discretion who is found there; or
- (iv) Mailing it by registered or certified mail to him at his or her last known address. In the event that personal service as described in this paragraph is impracticable, any other method whereby actual notice is given to the respondent may be employed.

(2) Service upon other persons. When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by—

- (i) Handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of such person;
- (ii) Mailing it by registered or certified mail to any such representative at his or her last known address; or
- (iii) Any other method whereby actual notice is given to any such representative.

(c) *Witness fees and mileage.* Witnesses appearing pursuant to subpoena shall be paid the same fees and mileage that are paid to witnesses in the United States district courts. Any such fees and mileage payments need be paid only upon submission of a properly completed application for reimbursement and in no event need they be paid sooner than 30 days after the appearance of the witness pursuant to subpoena.

(d) *Enforcement.* Whenever it appears to the General Counsel that any person upon whom a subpoena was properly served pursuant to these Rules is refusing to fully comply with the terms of that subpoena, then the General Counsel, in his or her discretion, may apply to the courts of the United States for enforcement of such subpoena.

§ 747.804 Oath; false statements.

At the discretion of the officer conducting the investigation, testimony of a witness may be taken under oath and administered by the officer. Any

person making false statements under oath during the course of a formal investigative proceeding is subject to the criminal penalties for perjury in 18 U.S.C. 1621. Any person who knowingly and willfully makes false and fraudulent statements, whether under oath or otherwise, or who falsifies, conceals or covers up any material fact, or submits any false, fictitious or fraudulent information in connection with such a proceeding, is subject to the criminal penalties set forth in 18 U.S.C. 1001.

§ 747.805 Self-incrimination; immunity.

(a) *Self-incrimination.* Except as provided below, a witness testifying or otherwise giving information in a formal investigative proceeding may refuse to answer questions on the basis of his or her right against self-incrimination granted by the Fifth Amendment of the Constitution of the United States.

(b) *Immunity.* (1) No officer conducting any formal investigative proceeding (or any other informal investigation or examination) shall have the power to grant or promise any party any immunity from criminal prosecution under the laws of the United States or of any other jurisdiction.

(2) If the NCUA Board believes that the testimony or other information sought to be obtained from any party may be necessary to the public interest and that party has refused or is likely to refuse to testify or provide other information on the basis of his or her privilege against self-incrimination, the NCUA Board, with the approval of the Attorney General, may issue an order requiring the party to give testimony or provide other information that he or she has previously refused to provide on the basis of self-incrimination.

(3) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a formal investigative proceeding, and the officer conducting the investigation communicates to that person an order of the NCUA Board requiring him or her to testify or provide other information, the witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 747.806 Transcripts.

Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the officer conducting the investigation. A party who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his or her documentary evidence or a transcript of his or her testimony on payment of the appropriate fees; *Provided, however,* That in a nonpublic formal investigative proceeding the NCUA Board may for good cause deny such request or the NCUA Board may place reasonable limitations upon the use of the documentary evidence and transcript. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony.

§ 747.807 Rights of witnesses.

(a) In the event that a formal investigative proceeding is conducted pursuant to a specific order entered by the NCUA Board or by its General Counsel, then any party who is compelled or requested to provide documentary evidence or testimony as part of such proceeding shall, upon request, be shown a copy of the NCUA Board's or its delegate's order. Copies of such orders shall not be provided for their retention to such persons requesting same except in the sole discretion of the General Counsel or his designee.

(b) Any party compelled to appear, or who appears by request or permission of the officer conducting the investigation, in person at a formal investigative proceeding may be accompanied, represented and advised by counsel who is a member of the bar of the highest court of any state; *Provided however,* That all witnesses in such proceeding shall be sequestered, and unless permitted in the discretion of the officer conducting the investigation, no witness or the counsel accompanying any such witness shall be permitted to be present during the examination of any other witness called in such proceeding.

(c)(1) The right of a witness to be accompanied, represented and advised by counsel shall mean the right to have an attorney present during any formal investigative proceeding and to have the attorney—

(i) Advise such person before, during and after such testimony;

(ii) Question such person briefly at the conclusion of his testimony to clarify any answers such person has given; and

(iii) Make summary notes during such testimony solely for the use of such person.

(2) From time to time, in the discretion of the officer, it shall be necessary for persons other than the witness and his or her counsel to attend non-public investigative proceedings. For example, the officer may deem it appropriate that outside counsel to the NCUA Board attend and advise him or her concerning the proceeding including the examination of a particular witness. In these circumstances, outside counsel would not be an officer as that term is used. In other circumstances, it may be appropriate that a technical expert (such as an accountant) accompany the witness and his or her counsel in order to assist counsel in understanding technical issues. These latter circumstances should be rare, are left to the discretion of the officer conducting the investigation, and shall not in any event be allowed to serve as a ruse to coordinate testimony between witnesses, to oversee or supervise the testimony of any witness, or otherwise defeat the beneficial effects of the witness sequestration rule.

(d) The officer conducting the investigation may report to the NCUA Board any instances where any witness or counsel has been guilty of dilatory, obstructionist or contumacious conduct during the course of a formal investigative proceeding or any other instance of violations of these rules. The NCUA Board will thereupon take such further action as the circumstance may warrant including barring the offending person from further participation in the particular formal investigative proceeding or even from further practice before the Board.

Subpart J—Local Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or committee Members Pursuant to Section 212 of the FCUA

§ 747.901 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the FCUA (12 U.S.C. 1791) and § 701.14 of this chapter, for the consent of the NCUA to add to or replace an individual on the board of directors or supervisory or credit committee, or to employ any individual as a senior executive officer or change the responsibilities of any individual to a position of senior executive officer where the credit union either has been chartered less than 2 years; or is in "troubled condition," as defined in § 701.14 of this chapter. Subpart A of

this part shall not apply to any proceeding under this subpart.

§ 747.902 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit union pursuant to section 212 of the FCUA and § 701.14 of this chapter, where the competence, experience character or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the members of the credit union or the public to permit the individual to be employed by or associated with, such credit union.

§ 747.903 Procedures where notice of disapproval issued; reconsideration.

(a) The notice of disapproval shall be served upon the federally insured credit union and the candidate for director, committee member or senior executive officer. The notice of disapproval shall:

(1) Summarize or cite the relevant consideration specified in § 747.902;

(2) Inform the individual and the credit union that, within 15 days of receipt of the notice of disapproval, they can request reconsideration by the Regional Director of the initial determination, or can appeal the determination directly to the NCUA Board;

(3) Specify what additional information, if any, must be constant in the reconsideration.

(b) The request for reconsideration by the Regional Director must be filed at the appropriate Regional Office.

(c) The Regional Director shall act on a request for reconsideration within 30 days of its receipt.

§ 747.904 Appeal.

(a) *Time for filing.* Within 15 days after issuance of a Notice of Disapproval or a determination on a request for reconsideration by the Regional Director, the individual or credit union (henceforth petitioner) may appeal by filing with the NCUA Board a written request for appeal.

(b) *Contents of request.* Any appeal must be in writing and include:

(1) The reasons why NCUA should review its disapproval; and

(2) Relevant, substantive and material documents that for good cause were not previously set forth in the notice required to be filed pursuant to section 212 of the FCUA and § 701.14 of this chapter.

(c) *Procedures for review of request.* Within 30 days of the NCUA Board's receipt of an appeal, the NCUA Board may request in writing that the

petitioner submit additional facts and records to support the appeal. The petitioner shall have 15 days from the date of issuance of such written request to provide such additional information. Failure by the petitioner to provide additional information may, as determined solely by the NCUA Board or its designee, result in denial of the petitioner's appeal.

(d) *Determination on appeal by NCUA Board or its designee.* (1) Within 90 days from the date of the receipt of an appeal by the NCUA Board or its designee or of its receipt of additional information requested under paragraph (c) of this section, the NCUA Board or its designee shall notify the petitioner whether the disapproval will be continued, terminated, or otherwise modified. The NCUA Board or its designee shall promptly rescind or modify the notice of disapproval where the decision is favorable to the petitioner.

(2) The determination by the NCUA Board on the appeal shall be provided to the petitioner in writing, stating the basis for any decision of the NCUA Board or its designee that is adverse to the petitioner, and shall constitute a final order of the NCUA Board.

(3) Failure by the NCUA Board to issue a determination on the petitioner's appeal within the 90-day period prescribed under paragraph (d) (1) of this section shall be deemed a denial of the appeal for purpose of § 747.905.

§ 747.905 Judicial review.

(a) Failure to file an appeal within the applicable time periods, either to the initial determination or to the decision a request for reconsideration, shall constitute a failure by the petitioner to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be

deemed to be waived and such determination shall be deemed to have been accepted by, and shall be binding upon, the petitioner.

(b) For purposes of seeking judicial review of actions taken pursuant to this section, suit may be filed in the United States District Court for the district where the requester resides, where the credit union's principal place of business is located, or in the District of Columbia.

Subparts K and L [Removed]

5. Subparts K and L are removed.

Dated: June 5, 1991.

Becky Baker,

Secretary of the National Credit Union
Administration Board.

[FR Doc. 91-13881 Filed 6-14-91; 8:45 am]

BILLING CODE 4810-33-M, 6210-01-M, 6714-01-M,
6720-01-M, 7535-01-M

federal register

**Monday
June 17, 1991**

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

**Flight and Cabin Crew Notification
Guidelines; Final Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 108**

[Docket No. 26459; Amendment No. 108-9]

RIN 2120-AD92

Flight and Cabin Crew Notification Guidelines**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations and implements a statutory requirement for the notification of flight and cabin crewmembers of threats to the security of their flight. The Aviation Security Improvement Act of 1990 amended title III of the Federal Aviation Act of 1958 and directed the Administrator of the FAA to implement guidelines for such notification. This amendment is needed to clarify an air carrier's responsibility to disseminate threat information to inflight security coordinators and establishes new requirements to disseminate this information to flight and cabin crewmembers. Air carriers are also required to provide any evaluation of the threat information and countermeasures to be applied. This action is intended to enhance civil aviation security.

EFFECTIVE DATE: July 17, 1991.

FOR FURTHER INFORMATION CONTACT: Frederick P. Falcone, Office of Civil Aviation Security Policy and Plans, Policy and Standards Division (ACP-110), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7296.

SUPPLEMENTARY INFORMATION:**Background and Discussion of the Rule**

The Federal Aviation Administration (FAA) undertook this rulemaking to comply with a legislative mandate imposed by the Aviation Security Improvement Act of 1990 (the Act), Public Law 101-604, which was signed into law on November 16, 1990. Section 109 of the Act amended title III of the Federal Aviation Act of 1958 (49 U.S.C. app. 1341-1358) and directed the Administrator of the FAA to develop guidelines for ensuring notification of the flight and cabin crews of an air carrier flight of threats to the security of such flight in appropriate cases.

On January 28, 1991, the FAA issued a notice of proposed rulemaking (NPRM) (56 FR 4322; February 4, 1991) to amend § 108.19 of the Federal Aviation

Regulations, 14 CFR 108.19, to provide such guidelines. Under the proposed rule, upon receipt of a specific and credible threat to the security of a flight, a certificate holder would be required immediately to notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any countermeasures to be applied. In addition, the certificate holder would be required to ensure that the in-flight security coordinator (which is the pilot in command under 14 CFR 108.10) notifies the flight and cabin crews of the same threat information.

The current system for evaluating and responding to threats to civil aviation is founded on the principle that it is best for intelligence experts to filter threat information before providing it to aviation personnel directly responsible for dealing with those threats. The air carrier's security experts, generally in consultation with the FAA and other government entities, evaluate threat information against specific FAA-established criteria to determine "specificity" and "credibility." (The terms "specific" and "credible" are not interdependent and are commonly applied by intelligence experts to threat information involving a well defined target and which has been authenticated.)

Excluding those threats which are judged to be groundless or not requiring the application of specific countermeasures is a practical approach, given the hundreds of bogus threats received annually. Eliminating bogus threats is also critical to ensure that real threats are perceived as serious, not diluted in impact by a multiplicity of false alarms. This limited distribution of threat information helps ensure that genuine threats are handled as thoroughly and expeditiously as possible. In the FAA's view, it is not appropriate to provide notification to flight and cabin crews unless the threat information has been judged by security professionals to be specific and credible.

Interested persons were invited to participate in the rulemaking by submitting written comments.

Discussion of Comments

The FAA received seven comments from entities representing regional airlines, major air carriers, pilots, and flight attendants. One comment was received from a member of the general public. No comments were received from Congress or other government agencies. The commenters who express some criticism of FAA's proposed rule address policy choices the FAA described in its NPRM, while not contradicting the factual bases for the

FAA's choices. None of the commenters address the Regulatory Evaluation Summary, which concerns the economic consequences of the proposed rule as published in the NPRM.

One commenter has no criticism of the proposed rule and urges that it be adopted as a final rule.

Another commenter supports the essence of the proposed rule, but with one change. This commenter, the Air Transport Association, proposes that the pilot in command decide on a case by case basis whether the crew should be notified of threat information. The FAA does not accept this suggestion. As noted in the preamble of the NPRM, the proposed rule was intended to "eliminate any discretion on this issue, and require the carrier to ensure that the in-flight security coordinator provides the flight and cabin crew with threat information along with any evaluation and the countermeasures to be applied." (56FR 4324) Adoption of this commenter's suggestion would be contrary to the interests of other crewmembers in receiving timely and accurate threat notification and runs counter to the spirit of the Act. Two commenters representing cabin crew members specifically endorse the FAA's policy choice on this issue.

A third supporting commenter urges adoption of the proposed regulatory language without change, and suggests the FAA consider appropriate amendments to the Air Carrier Standard Security Program (ACSSP), which was referenced in the NPRM. The FAA is currently evaluating the need to amend the ACSSP and may do so in connection with implementation of the final rule.

Three commenters accept the limitation in the proposed rule to credible threat information, but suggest that all credible information, even if non-specific, should be communicated to crewmembers. One of the commenters requests clarification of the FAA's definition of "specific." As explained in the NPRM, "specific" in this context refers to threat information that involves a well defined target or targets. A well defined target may include a single flight or series of flights spanning a particular period of time or geographic location. Specific threat information includes positive details describing an individual, airplane, aviation operation, or facility which suggests a particular knowledge of the intended target or targets not widely held by the general public.

If the scope of crew notification is not limited to threat information involving a well defined target, carriers would find it impossible to determine which threat information should be presented to the

crew of a given flight. It would not be appropriate for carriers to relay all known, credible threat information to the crews of all flights, regardless of whether the threat information applied to that particular flight. Doing so would run the risk of inundating crews with a large quantity of irrelevant material, while obscuring the truly useful information.

This conclusion is supported by the legislation, which requires notification of the "crews of an air carrier flight of threats to the security of such flight in appropriate cases" (emphasis added). Congress did not direct the Administrator to develop guidelines for crew notification of threats to the security of *all* or *any* flights, and such notification would not be appropriate. However, carriers may provide notification to flight and cabin crews of any non-specific threats beyond the scope of this rule, if they deem it appropriate.

One commenter suggests that the FAA substitute the term "relevant" for "specific" in the language of the rule. As explained above, "specific" in this context includes information which is relevant to a single flight or series of flights. The term "specific" is preferable because it is a term of art used by security professionals.

One commenter recommends that, when practicable, a cabin crew briefing with the in-flight security coordinator should be held prior to boarding the aircraft of a flight affected by a security threat. This commenter observes that most carriers already follow this procedure and flight attendants have found briefings to be an appropriate opportunity to discuss their concerns. The FAA agrees that such briefings are an appropriate procedure for notification of threat information, and that they should be held when practicable.

Two commenters suggest that crews should be notified of all threat information, whether bogus or credible. The FAA explained in detail in the NPRM why it is inappropriate to notify crews of threat information that has not been determined to be credible. As noted in the preamble, the Report of the President's Commission on Aviation Security and Terrorism supported limiting notification to credible threats. Six commenters, all of whom represent entities directly affected by the proposed rule, either affirmatively endorse or take no exception to this conclusion.

One of these commenters expresses the opinion that security information is comparable to weather or mechanical information, and proposes that all such

information should be made available to the pilot to assist him or her in dealing with various eventualities. While the FAA is sensitive to this commenter's concerns, the agency does not agree with this suggestion. The FAA recognizes that a wide diversity of skills and complex training are needed in order to serve as a pilot in command in today's environment. A pilot's training and experience equip him or her to interpret and use a wide variety of information, including weather and mechanical data, in making crucial decisions.

The interpretation of intelligence-based security information, however, has not historically been within the purview of the pilot in command. Instead, responsibility for filtering and interpreting this information has rested with airline and government intelligence and security professionals. The FAA believes it is essential that threat information be filtered and assessed by those professionals if it is to be useful to the pilot in command and crew.

As explained in the preamble to the NPRM, the FAA agrees with the Report of the President's Commission that "the professionals who analyze threat information—the intelligence and law enforcement communities" should retain authority to determine the credibility of threat information (56 FR 4324). This commenter suggests that crews should be trained to perform this evaluation. The FAA believes this suggestion is not practical and would lead to an unproductive duplication of resources.

The rule as proposed will make the most effective use of both professional security and crew resources. This measure will help ensure that crews are thoroughly informed, so that they can focus their attention on possible security problems and perform their security-related functions with a heightened level of care and awareness.

One commenter criticizes the short period allowed for comment. This comment was considered although it was received after the closing date. The FAA issued the NPRM in response to a Congressional mandate to establish crewmember notification guidelines not later than 180 days after the enactment of the Aviation Security Improvement Act. The 30 day comment period reflects the time available to promulgate this expedited rulemaking.

After careful consideration of the comments and available data, the FAA has determined that air safety and the public interest require adoption of the rule as proposed.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this final rule. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. This determination is normally made on the basis of a regulatory evaluation. In this case, however, the Congress has already determined that this rule is in the public interest; that is, its collective public benefits outweigh its costs to the public, because Congress has required the rule to be promulgated (The Aviation Security Improvement Act of 1990: Pub. L. 101-604). Nevertheless, the FAA has prepared this conventional regulatory evaluation of the rule. The purpose of this evaluation is not to justify this rulemaking action (which has already been done through Congressional action), but to estimate potential costs and benefits (either qualitatively or quantitatively) to promote a better understanding of the impact of the rule. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order, therefore a full regulatory analysis, including the identification and evaluation of cost-reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the

full regulatory evaluation contained in the docket.

Costs

The rule is expected to impose a negligible incremental cost of compliance on U.S. air carriers. In addition, the rule is not expected to impose any monetary costs on the flying public. This assessment is based on the rationales contained in the following paragraphs.

The FAA expects the costs of the rule to be negligible based on two assumptions. First, the rule is assumed not to substantially increase the costs associated with the current flow of specific and credible security threat information between air carrier management and ground and in-flight security coordinators. This is because air carriers are already providing most of the security information required by the rule to ground and in-flight security coordinators on a routine basis.

The second assumption is that air carriers will not incur additional costs beyond current industry practice, as the result of ensuring that in-flight security coordinators notify flight and cabin crewmembers of *all* specific and credible security threats. This is also true of the requirement that air carriers provide any evaluation of the threat information and countermeasures to be applied. Disclosure of this information to flight and cabin crewmembers will impose only a negligible cost of compliance on air carrier operators because they already compile specific and credible security threat information on a routine basis.

Although the FAA contends that the rule will impose a negligible cost of compliance for the notification process, it recognizes that the potential for significant costs does exist in some cases. The reason for this assessment is that in-flight security coordinators (pilots in command) have the authority to request additional countermeasures if they consider them to be justified. The magnitude of this potential cost impact will depend on the extent to which flight and cabin crews expand the field of information available to security experts, who could then decide to take additional countermeasures based upon all security information available. These measures could include delaying scheduled flights from departing or requesting airborne flights to land for the purpose of conducting additional security checks or applying countermeasures.

The average time required to conduct a security check for narrow and wide-body aircraft on the ground ranges between 3 and 5 hours. If an aircraft is

airborne and forced to land for a security check, there would be an additional cost for landing fees and delay time. Another cost factor (qualitative) associated with this potential situation could be the inconvenience imposed on passengers in the form of delays. According to one air carrier, the cost of an aircraft delay as the result of conducting additional security countermeasures could be as high as \$200,000 to over \$1 million (in 1990 dollars) per security check. The reader is cautioned that this range should not be considered precise and incorporates a number of general assumptions. Some of the assumptions include: The delayed aircraft is the only one connected to departures from other areas, additional flight crews may be needed due to time and duty limitations, lawsuits may be filed by some passengers, costs may be incurred for another slot at the gate, plus a multitude of other factors.

Over the past 10 years, on average, air carriers have received between 650 and 750 security threats annually. An estimated 600 to 700 of these threats were anonymous that were not determined to be specific and credible. None of these anonymous threats resulted in an explosion or the discovery of a bomb. During the same period, on an annual basis 30, out of 50 credible aircraft security threats were specific. To date, there is no evidence of an explosion or discovery of a bomb relating to a specific and credible security threat.

Benefits

The final rule will generate benefits by ensuring that the current high level of aviation safety remains intact. Under the rule, air carriers will be required to provide all credible and specific security threats, as well as any evaluation thereof and countermeasures to be applied, to the ground and in-flight security coordinators. In turn, the in-flight security coordinator will notify the flight and cabin crewmembers. The flight and cabin crewmembers will benefit directly from the rule. As the "eyes and ears" of an air carrier, flight and cabin crewmembers are trained to be alert to possible security threats and to apply security procedures when a threat is suspected. The rule will better enable flight and cabin crewmembers to conduct their security responsibilities by enhancing their alertness to indications that a threat may be actually carried out. The enhanced awareness of the flight and cabin crews will subsequently benefit the in-flight security coordinator by enhancing the information he or she has as the pilot in command. The rule

will benefit the traveling public by reducing the possibility that security threats to a U.S. air carrier not disclosed to flight and cabin crewmembers will result in casualty losses (namely, aviation fatalities and property damage).

Conclusions

The rule will impose only negligible incremental costs on air carriers and could result in benefits to the aviation community and flying public in the form of ensuring that the current high level of aviation safety remains intact. Therefore, the FAA concludes that the rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that could be potentially affected by the implementation of this rule are scheduled air carrier operators for hire that own but do not necessarily operate nine or fewer aircraft. A significant economic impact for these small entities will be an annualized cost that exceeds \$105,000 (in 1990 dollars). Since the incremental cost of compliance is expected to be negligible (less than \$105,000 annually for each air carrier operator), the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule is expected to impose only negligible costs on U.S. air carrier operators. This action will not result in a competitive disadvantage to U.S. carriers engaged in international flight operations.

Federalism Implications

The rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, it is certified that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the

person identified under "For Further Information Contact."

List of Subjects in 14 CFR Part 108

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 108 of the Federal Aviation Regulations (14 CFR part 108) as follows:

PART 108—[AMENDED]

1. The authority citation for part 108 is revised to read as follows:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g); Sec. 101 *et seq.*, Pub. L. 101-604, 104 Stat. 3066.

2. Section 108.19 is amended by redesignating paragraphs (a) and (b) as

(b) and (c) respectively; by adding a new paragraph (a); and by revising the section heading to read as follows:

§ 108.19 Security Threats and Procedures.

(a) Upon receipt of a specific and credible threat to the security of a flight, the certificate holder shall—

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any countermeasures to be applied; and

(2) Ensure that the in-flight security coordinator notifies the flight and cabin crewmembers of the threat, any evaluation thereof, and any countermeasures to be applied.

* * * * *

Issued in Washington, DC, on June 11, 1991.

James B. Busey,
Administrator.

[FR Doc. 91-14321 Filed 6-12-91; 2:46 pm]

BILLING CODE 4910-13-M

Federal Register

**Monday
June 17, 1991**

Part IV

Department of Transportation

Research and Special Programs Administration

**49 CFR Parts 107, 173, 178, and 180
Requirements for Cargo Tanks; Final
Rule; Corrections and Revisions**

DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Parts 107, 173, 178, and 180**

[Docket No. HM-183, 183A; Amdt. Nos. 107-20, 173-212, 178-89, 180-2]

RIN 2137-AA42

Requirements for Cargo Tanks; Corrections

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; corrections and revisions.

SUMMARY: This amendment makes corrections and clarifying revisions to certain requirements pertaining to cargo tank motor vehicles in the Hazardous Materials Regulations (HMR, 49 CFR parts 171-180). These requirements were adopted in a final rule issued under Docket Nos. HM-183/183A (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028). The changes contained in this amendment will impose no new requirements on persons subject to the HMR.

EFFECTIVE DATE: June 17, 1991.

FOR FURTHER INFORMATION CONTACT:

Charles Hochman, telephone (202) 366-4545, Office of Hazardous Materials Technology, or Hattie Mitchell, telephone (202) 366-4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001;

or

Richard Singer, telephone (202) 366-2994, Office of Motor Carriers, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: This document corrects typographical errors, omissions, and discrepancies to requirements in the HMR pertaining to cargo tank motor vehicles. Additionally, in response to inquiries received by RSPA concerning the clarity of particular requirements, changes are made which should reduce uncertainties. These changes impose no new requirements on persons subject to the HMR.

Because the amendments adopted herein clarify and correct certain provisions in the HMR, relieve certain restrictions in those regulations, and impose no new regulatory burden on

any person, notice and public procedure are unnecessary. For these same reasons, these amendments are being made effective without the usual 30-day delay following publication.

The following is a section-by-section review of the amendments.

Section 107.504

The second sentence of § 172.504(c) implies that only those persons registered under the provisions of § 172.502(f) are eligible to renew their registrations. This error is corrected by changing “§ 172.502(f)” to “§ 172.502”.

Section 173.33

RSPA has received several requests for clarification of the requirements contained in § 173.33(a)(2). The intent of this section is to prevent the transportation of two or more materials in the same cargo tank motor vehicle which, if mixed, would cause a vehicle fire, tank rupture or the release of acutely toxic vapors. An example of materials which would be prohibited are nitric acid and fuel oil. It was not intended to prevent the shipment of materials which if mixed would produce a moderate exothermic reaction that would not start a fire, rupture the tank or release acutely toxic vapors.

For hazardous materials offered for transportation in a cargo tank motor vehicle supplied by the motor carrier, § 173.22(a)(2) was revised in the September 7, 1990 amendment to clarify that shippers' responsibilities extend to the requirements in part 173 but not to the continuing requalification requirements contained in part 180. Section 173.33(a)(3) contains a requirement that, when the prescribed periodic retest or reinspection under subpart E of part 180 is past due, a specification cargo tank motor vehicle may not be filled and offered for transportation until the retest or reinspection has been successfully completed. Hazardous materials are often loaded at bulk loading facilities in cargo tank motor vehicles supplied by the motor carrier without the offeror in attendance. In these instances, verification of a carrier's compliance with part 180 is not possible. To alleviate this discrepancy, paragraph (a)(3) is revised to reflect that this requirement does not apply to an offeror in situations where the cargo tank is supplied by the motor carrier.

Paragraphs (c)(4) and (d)(1) contain criteria for the continued use of certain cargo tanks manufactured prior to December 31, 1990. Included are cargo tanks marked with a design pressure rather than a Maximum Allowable Working Pressure (MAWP), and cargo

tanks fitted with non-reclosing pressure relief devices. The December 31, 1990 date should have been adjusted to coincide with the last date on which a cargo tank may be marked or certified to the MC specifications in effect on December 30, 1990. Accordingly in paragraphs (c)(4) and (d)(1), the date “December 31, 1990” is revised to read “August 31, 1993”. In paragraph (c)(2), the December 31, 1990 date for requiring a cargo tank to be marked or remarked with an MAWP or design pressure in accordance with § 180.405(k) remains unchanged.

Many hazardous material liquids transported in cargo tanks are required to be completely blanketed with an inert gas, (e.g., see §§ 173.190 and 173.247a). To clarify the intent of the requirements of paragraph (d)(2), the wording “in its gaseous state” is revised to read “with a gas pad”.

Formerly, § 173.33 contained various provisions pertaining to commodities, cargo tank design, qualification, maintenance and use of cargo tanks. Under HM-183/183A, these provisions were placed elsewhere in parts 173, 178 and 180, as appropriate. It has been brought to RSPA's attention that several provisions placed in the MC 331 specification, i.e. in §§ 178.337-1(e), 178.337-9 (b) and (d), and 178.337-15, also apply to existing MC 330 cargo tanks, and that Parts 173 and 180 contain no references to apply those requirements to MC 330 cargo tanks. RSPA plans to address reinstating these provisions for MC 330 cargo tanks in a rulemaking proposal in the near future.

Sections 173.245-173.74

In § 173.245, authorization for the use of DOT 406 cargo tanks was inadvertently omitted in the introductory text to paragraph (a)(29). This omission is corrected.

Also in the September amendment, §§ 172.101 and 173.154 were amended by increasing the concentration cut-off point for ammonium nitrate solution from “containing not less than 15% water” to “containing 35% or less water”. RSPA stated in the preamble discussion that the entry for “Ammonium nitrate solution” was being revised to reflect that ammonium nitrate solutions with “35% or less water” do not meet the definition of an oxidizer. This statement should have read that such solutions with “over 35% water” do not meet the definition of an oxidizer. Also, in Docket HM-181 (December 21, 1990; 55 FR 52584), § 172.101 Hazardous Materials Table, special provision B5 to the entry “Ammonium nitrate, liquid (hot concentrated solution)” refers to

"ammonium nitrate solutions with 35 percent or more water". This special provision should have referred to solutions containing "35% or less water" which are regulated as oxidizers and will be corrected under HM-181.

Section 178.337-3

Paragraph (c), containing definitions of the terms " S_v " and " S_x ", is reorganized for clarity and consistency in numbering of subparagraphs. No substantive change is made. Similar changes are made to these terms in §§ 178.338 and 178.345-3.

Section 178.337-6

Paragraph (a) requires cargo tanks manufactured after August 31, 1990, to have a manhole or, for certain cargo tanks, an inspection opening. The August 31, 1990 date should have been extended to coincide with the last date for which a cargo tank may be marked or certified to the MC 331 specification in effect on December 30, 1990. Accordingly, the date "August 31, 1990" is corrected to read "August 31, 1993".

Section 178.338-3

Paragraph (c), containing definitions of the terms " S_v " and " S_x ", is reorganized for clarity and consistency in numbering of subparagraphs. No substantive change is made.

Section 178.345-2

RSPA has received information to the effect that American Society for Testing and Materials (ASTM) A 607 steel has been used successfully for many years under § 178.340-3 for manufacture of cargo tanks, and that ASTM A 607 steel has chemical and physical properties similar to ASTM A 572 steel authorized under § 178.345-2. Therefore, RSPA is revising paragraph (a)(1) to permit the continued use of ASTM A 607 steel for DOT specification cargo tank motor vehicles.

Section 178.345-3

It was RSPA's intention, in paragraph (a)(1), to provide alternative methods for determining the maximum design stress to be used in calculating stresses as provided by paragraph (c); namely, either the maximum allowable stress value prescribed in Section VIII of the American Society of Mechanical Engineers (ASME) Code, or 25 percent of the actual tensile strength as determined by physical property tests of the material used. The factor of safety is the same regardless of which method is employed. Accordingly, the words "the lesser of" are removed and the words "at design conditions" are added for clarity.

Paragraph (c), containing definitions of the terms " S_v " and " S_x " is reorganized for clarity and consistency in numbering of subparagraphs. No substantive change is made. Also, the number "0.7" is corrected to read "0.75". This was a printing error.

In paragraph (g)(2), lightweight attachments are required to be constructed of materials of lesser strength than the cargo tank wall materials. This paragraph is revised to clarify that these attachments also may be made of the same material of construction as the tank head or shell to which they are welded.

Section 178.345-7

Several cargo tank manufacturers understood the wording "where discontinuity in the alignment of longitudinal shell sheets exceeds the greater of 10 degrees or eight inches," in paragraph (a)(2), to refer to the alignment of longitudinal welded seams in cargo tank shell sheets. The intent of this paragraph was to address the angularity between adjacent conical shell sections, as in double conical tanks, or between conical and cylindrical sections, as at transition structures between forward and rear shells having different cross-sectional dimensions. The numerical value of 10 degrees indicates that the "discontinuity" measured is equivalent to the "half-apex angle" as defined in Mandatory Appendix 1, 1-4 of the ASME Code, section VIII, Division 1. The description of the angle between adjacent shell sections is revised in this amendment for clarity. In addition, the Truck Trailer Manufacturers Association (TTMA) suggested that "discontinuity in the alignment" between shell sections of "up to 30 degrees" be allowed, citing Mandatory Appendix 1, 1-5, titled "Rules for Conical Reducer Sections and Conical Heads under Internal Pressure," of the ASME Code, section VIII, Division 1. This section of the ASME Code provides analytical rules for the design of such joints with half-apex angles even greater than 30 degrees. However, RSPA believes there is no need to specifically reference this section. With the exception of those parts of the ASME Code which are specifically identified as not applying to individual specifications, all parts of the Code apply.

The limitations on welding contained in paragraph (c) do not apply to welded portions of circumferential reinforcement located external to the tank. Therefore, paragraph (c) is revised for clarity. In paragraph (d), the word "it" is replaced with the word "reinforcement" to clarify that the

circumferential reinforcement would be continuous, but the ring stiffener need not be continuous.

Section 178.345-8

RSPA believes the second sentence in paragraph (d)(3) pertaining to design stress levels is unnecessary in view of the design requirements prescribed in the first sentence. Therefore, the second sentence is removed and minor editorial changes are made to the last sentence.

Section 178.345-9

Paragraph (a) requires each loading or unloading pump mounted on a cargo tank motor vehicle that may pressurize the cargo tank to have an automatic means to prevent internal pressure from exceeding the MAWP of the tank and tank mounted equipment. Upon further consideration, RSPA believes that references to the loading or unloading pump and its mounted location are not necessary and that the limitation on internal pressure during loading or unloading operations is inconsistent with the test pressures prescribed by §§ 178.346, 178.347 and 178.348. These inconsistencies are corrected by providing that during loading and unloading the pressure within a cargo tank may not exceed test pressure.

Section 178.345-10

The dynamic surge requirements for the pressure relief system, contained in paragraph (b)(3), are rearranged to clarify the prescribed requirements and their applicable implementation dates.

Section 178.345-11

In the September amendment, we stated in the preamble discussion to § 178.345-11 (55 FR 37039) that a new paragraph (a)(4)(i) [which should have read paragraph "(b)(3)(i)"] was being added to clarify that the requirement for thermal actuation of self-closing stop-valves applies only to self-closing systems. In addition, we stated that a requirement in paragraph (b) concerning a tank outlet which is not a loading/unloading outlet was being broadened to permit the outlet to be equipped with a stop-valve or other leak-tight closure. Through an oversight, neither of these changes was included in the September amendment. These oversights are corrected in this amendment. In addition, based on several requests for clarification of this section, this section is reorganized for clarity.

Section 178.346-1, 178.437-1, 178.348-1

In a letter to RSPA, the Truck Trailer Manufacturers Association (TTMA) requested an exception from paragraph

UW-13(b)(2) and the dimensional requirements in Figure UW-13.1 of the ASME Code because the tooling equipment used by many manufacturers to form heads lacks the capability of providing a flange on the head of dimensions appropriate to meet this requirement. We were unaware that changes in manufacturing equipment would be required to meet this requirement and have no data to suggest that the use of current equipment for forming heads is unsafe. Therefore, we are granting an exception from paragraph UW-13(b)(2) and the dimensional requirements in Figure UW-13.1 to authorize continued use of existing manufacturing equipment.

Section 180.2

A minor editorial change is made in paragraph (b)(2).

Section 180.405

Paragraph (b) contains an authorization for the manufacture of MC 306, MC 307, and MC 312 cargo tanks to the applicable specification in effect on December 30, 1990, until August 31, 1993. Through an oversight, MC 330 and MC 331 cargo tanks were not included but are added under this amendment. A minor editorial revision is made in paragraph (C)(1).

Paragraph (c)(2)(vii) provides that pressure relief devices and outlets on an MC 330 cargo tank may be modified to that specified in § 178.337 for the MC 331 specification. It has been brought to RSPA's attention that the previous requirements in § 173.33(h) and (k) required that outlet and valves on MC 330 cargo tanks used to transport certain compressed gases be retrofitted to meet the MC 331 specification. The provisions previously contained in § 173.33(h) are now found in §§ 173.315 (h) and (o), 178.337-8(a), 178.337-9(b) and 178.337-11, as appropriate. The subject requirements in part 178 also apply to MC 330 cargo tanks in certain compressed gas service, as provided by §§ 173.315(n) and (o)(3). The provisions previously contained in § 173.33(k) are included in § 173.315(n). Therefore, RSPA has revised paragraph 180.405(c)(2)(vii) to include a reference to § 173.315 to alert persons to those requirements.

Requirements in paragraphs (g) (1) and (2) pertaining to the leak-tightness of manhole closures on specification cargo tanks are rearranged for clarity. In addition, provisions are added to clarify that there is no requirement to retest and certify manhole assemblies on MC 310, MC 311 and MC 312 cargo tanks with a test pressure of 36 psig or greater, or on MC 304 and MC 307 cargo tanks.

The first sentence in paragraph (g)(3), applying to owners of five or more DOT specification cargo tanks requiring retrofit or certification of the manhole closure, is corrected by revising the year "1990" to read "1991".

The liquid surge requirements for a reclosing pressure relief valve that is replaced on an MC specification cargo tank and the applicable implementation dates for leak-tightness conditions, as prescribed in paragraph (h), are revised for clarity.

Section 180.407

In paragraph (g)(1)(iv), the year "1990" is corrected to read "1991". Sections 1278.346-10(d)(3), 178.347-10(d)(2) and 178.348-10(d)(2) allow tank pressure, during loading or unloading, to reach test pressure at 1.5 times the MAWP; however, § 180.407(a)(2) does not allow for pressure increase during loading and unloading. For consistency with the specification requirements, paragraph (a)(2) is revised to allow a cargo tank to reach a pressure greater than its design pressure or MAWP during loading or unloading.

In the table in paragraph (c), insulated MC 330 and MC 331 cargo tanks are required to be given an internal visual inspection at least once every five years. However, paragraph (d)(1) provides that if insulation precludes making an external visual inspection, the cargo tank must be given an internal visual inspection annually. RSPA intent was to require insulated MC 330 and MC 331 cargo tanks to be visually inspected at least once every five years, not annually. This error is corrected in this amendment.

At various places in paragraph (f)(1) and (f)(2), the wording "leak" or "leaks" is used erroneously in referring to the presence of a "hole" through the lining. The wording has been revised to read "hole" or "holes". In addition, paragraph (f)(1) is revised for closer alignment with the Rubber Manufacturers Association Technical Bulletin 13, on which the lining inspection requirements are based. No substantive change is made.

The table in paragraph (g)(iv) is revised to show both metric measures and U.S. standard unit equivalents.

Paragraph (h)(1) provides for MC 330 and MC 331 cargo tanks to be leak-tested at normal operating pressure and to prevent the tanks from being operated at higher pressures. The National Propane Gas Association (NPGA) has notified RSPA that the normal operating pressure for cargo tanks in liquefied petroleum gas service changes substantially with the ambient temperature. NPGA stated that a cargo tank would have to be leak-tested only

on the warmest day of the year in order to ensure that it was not operated at pressures exceeding the test pressure. RSPA's intention was to permit a cargo tank which is normally operated at pressure levels substantially below its MAWP to be leak-tested at a lower pressure, provided it is a high-pressure cargo tank used in dedicated service. Therefore, paragraph (h)(1) is revised to permit owners to conduct this test at any ambient temperature, but at the maximum operating pressure experienced year round. Revised paragraph (h)(1) also allows MC 330 and MC 331 cargo tanks in liquefied petroleum gas service to be leak-tested at no less than 60 psig, and the paragraph has been rearranged for clarity.

Section 180.413

Paragraphs (d)(1) (i) and (ii) are revised to clarify that an MC 306, MC 307 and MC 312 cargo tank may be stretched and rebarrelled to the same specification until "August 31, 1991", to coincide with the last date for which these cargo tanks may be marked or certified to the MC specifications in effect on December 30, 1990.

Based on several telephone calls received by RSPA, there appears to be some confusion about the recertification of a cargo tank by a Design Certifying Engineer then certain types of work are performed. Section 180.413(d)(3) requires that the design of a rebarrelled or stretched cargo tank must be certified by a design Certifying Engineer. Such certification also applies to any design types changes to the undercarriage of a cargo tank, which affects the cargo tank's structural integrity, even though no welding is performed on the cargo tank wall. Paragraph (d)(3) is revised for clarity.

In the September amendment, the amendatory language to § 180.413 should have stated that paragraph (d)(2)(v) was being revised and not paragraph (d)(1)(v). This applicable regulatory text is correctly designated as paragraph (d)(2)(v) in the October 1, 1990 edition of the CFR. Therefore, no corrective action is required.

Section 180.415

This section is rearranged for clarity. No substantive change has been made.

Administrative Notices

Executive Order 12291 and Administrative Notices

RSPA has determined that based on the corrections contained herein this rulemaking (1) is not a "major rule" under terms of Executive Order 12291;

(2) will not affect non-for-profit enterprises or small governmental jurisdictions; (3) contains no policies that have Federalism implications as defined in Executive Order 12612; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). However, the final rule issued under Docket HM-183/183A (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028) is a significant rule under DOT implementing procedures (44 FR 11034). The original regulatory evaluation and regulatory flexibility analysis prepared for the final rule were not modified because the amendments herein do not impose additional requirements and are not substantive changes to the final rule. These documents are available for review in the docket.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I, subchapters B and C of the Code of Federal Regulations, are amended as set forth below.

The following amendments apply to parts 107, 173, 178, and 180 in effect as of the date of publication of this final rule:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53; Pub. L. 89-670 (49 App. U.S.C. 1653(d), 1655).

§ 107.504 [Amended]

2. In § 107.504, the last sentence in paragraph (c) is amended by revising the reference “§107.502(f)” to read “§ 107.502”.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

3. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

4. In § 173.33, paragraph (a)(3) is revised to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

(a) * * *

(3) No person may fill and offer for transportation a specification cargo tank motor vehicle for which the prescribed periodic retest or reinspection under subpart E of part 180 of this subchapter is past due until the retest or inspection has been successfully completed. This requirement does not apply to a cargo tank supplied by a motor carrier who is other than the person offering the hazardous material for transportation (see § 177.824 of this subchapter), or to any cargo tank filled prior to the retest or inspection due date.

* * * * *

§ 173.33 [Amended]

4a. In addition, in § 173.33, the following changes are made:

a. In paragraph (c)(4), the wording “manufactured prior to December 31, 1990” is revised to read “marked or certified before August 31, 1993”.

b. In paragraph (d)(1), in the second sentence, the wording “constructed before December 31, 1990” is revised to read “marked or certified before August 31, 1993”.

c. In paragraph (d)(2), in the first sentence, the wording “in its gaseous state” is revised to read “with a gas pad”.

§ 173.245 [Amended]

5. In § 173.245, the introductory text to paragraph (a)(29) is amended by adding “DOT 406,” immediately after “MC 312.”

§§ 173.369, 173.373, 173.374 [Amended]

6. The following sections are amended by removing the wording “, and Specification MC 330 and MC 331 are equipped with internal self-closing stop-valves meeting the requirements of § 178.337-11 of this subchapter”.

§ 173.369(a)(14)(iii)

§ 173.373(a)(6)(iv)

§ 173.374(a)(4)(v)

PART 178—SHIPPING CONTAINER SPECIFICATIONS

7. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR Part 1, unless otherwise noted.

8. In § 178.337-3, paragraph (c) is revised to read as follows:

§ 178.337-3 Structural integrity.

(c) Stresses resulting from static and dynamic loadings, or a combination thereof, are not uniform throughout the cargo tank motor vehicle. The following is a simplified procedure for calculating the effective stress in the cargo tank resulting from static and dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5 (S_y + S_x) \pm (0.25(S_y - S_x) + S_z)^{0.5}$$

Where:

(1) S_y = effective stress at any given point under the most severe combination of static and dynamic loadings that can occur at the same time, in psi.

(2) S_y = circumferential stress generated by internal and external pressure when applicable, in psi.

(3) S_x = the net longitudinal stress generated by the following loading conditions, in psi:

(i) The longitudinal tensile stress generated by internal pressure:

(ii) The tensile or compressive stress generated by the axial load resulting from a decelerative force equal to twice the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(iii) The tensile or compressive stress generated by the bending moment resulting from a decelerative force equal to twice the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(iv) The tensile or compressive stress generated by the axial load resulting from an accelerative force equal to the static weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(v) The tensile or compressive stress generated by the bending moment resulting from an accelerative force equal to the static weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle; and

(vi) The tensile or compressive stress generated by a bending moment produced by a vertical force equal to three times the static weight of the fully loaded vehicle.

(4) S_z = The following shear stresses that apply, in psi:

(i) The shear stress generated by a vertical force equal to three times the static weight of the tank and contents;

(ii) The lateral shear stress generated by a lateral accelerative force which will produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle, applied at the road surface; and

(iii) The torsional shear stress generated by a lateral accelerative force which will

produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle, applied at the road surface.

* * *

§ 178.337 [Amended]

9. In § 178.337-6, the first sentence in paragraph (a) is amended by removing the wording "manufactured after August 31, 1990" and adding in its place "marked or certified after August 31, 1993".

10. In § 178.338-3, paragraph (c) is revised to read as follows:

§ 178.338-3 Structural integrity.

* * *

(c) Stresses resulting from static and dynamic loadings, or a combination thereof, are not uniform throughout the cargo tank motor vehicle. The following is a simplified procedure for calculating the effective stress in the tank resulting from static and dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5 (S_y + S_x) \pm (0.25(S_y - S_x) + S_z)^{0.5}$$

Where:

(1) S = effective stress at any given point under the most severe combination of static and dynamic loadings that can occur at the same time, in psi.

(2) S_y = circumferential stress generated by internal and external pressure when applicable, in psi.

(3) S_x = the net longitudinal stress, in psi, generated by the following loading conditions:

(i) The longitudinal tensile stress generated by internal pressure;

(ii) The tensile or compressive stress generated by the axial load resulting from a decelerative force applied independently to each suspension assembly at the road surface using applicable static loadings specified in § 178.338-13 (b) and (c);

(iii) The tensile or compressive stress generated by the bending moment resulting from a decelerative force applied independently to each suspension assembly at the road surface using applicable static loadings specified in § 178.338-13 (b) and (c);

(iv) The tensile or compressive stress generated by the axial load resulting from an accelerative force applied to the horizontal pivot of the fifth wheel supporting the vehicle using applicable static loadings specified in § 178.338-13 (b) and (c);

(v) The tensile or compressive stress generated by the bending moment resulting from an accelerative force applied to the horizontal pivot of the fifth wheel supporting the vehicle using applicable static loadings specified in § 178.338-13 (b) and (c); and

(vi) The tensile or compressive stress generated by a bending moment produced by a vertical force using applicable static loadings specified in § 178.338-13 (b) and (c).

(4) S_z = The following shear stresses that apply, in psi.: The vectorial sum of the applicable shear stresses in the plane under consideration, including direct shear

generated by the static vertical loading; direct lateral and torsional shear generated by a lateral accelerative force applied at the road surface, using applicable static loads specified in § 178.338-13 (b) and (c).

* * *

§ 178.345-2 [Amended]

11. In § 178.345-2, paragraph (a)(1) is amended by adding "ASTM A 607" immediately after "ASTM A 572" and before "ASTM A 656".

12. In § 178.345-3, paragraph (a)(1) is amended by removing the wording "the lesser of" and by adding "at design conditions" at the end of the sentence, and paragraph (c) and the first sentence of paragraph (g)(2) are revised to read as follows:

§ 178.345-3 Structural integrity.

* * *

(c) Stresses resulting from static or dynamic loadings, or a combination thereof, are not uniform throughout the cargo tank motor vehicle. The following is a simplified procedure for calculating the effective stress in the tank shell and heads resulting from static and dynamic loadings. The effective stress (the maximum principal stress at any point) must be determined by the following formula:

$$S = 0.5(S_y + S_x) \pm (0.25(S_y - S_x)^2 + S_z^2)^{0.5}$$

Where:

(1) S = effective stress at any given point under the most severe combination of static and dynamic loadings that can occur at the same time, in psi.

(2) S_y = circumferential stress generated by internal and external pressure, when applicable, in psi.

(3) S_x = the net longitudinal stress generated by the following loading conditions, in psi.:

(i) The longitudinal stresses resulting from the MAWP and from the lowest pressure at which the cargo tank may operate, in combination with the bending stress generated by the weight of the lading, the weight of the cargo tank and other structures and equipment supported by the cargo tank wall;

(ii) The tensile or compressive stress generated by the axial load resulting from a longitudinal decelerative force equal to 0.75 times the vertical reaction at each suspension assembly, applied at the road surface. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank motor vehicle;

(iii) The tensile or compressive stress generated by the bending moment resulting from a longitudinal decelerative force equal to 0.75 times the vertical reaction at each suspension assembly, applied at the road surface. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank motor vehicle;

(iv) The tensile or compressive stress generated by the axial load resulting from a longitudinal accelerative force equal to 0.75

times the static weight of the fully loaded cargo tank, applied at the horizontal pivot of the upper coupler (fifth wheel) or turntable supporting the cargo tank motor vehicle;

(v) The tensile or compressive stress generated by the bending moment resulting from a longitudinal accelerative force equal to 0.75 times the static weight of the fully loaded cargo tank applied to the horizontal pivot of the upper coupler (fifth wheel) or turntable supporting the cargo tank motor vehicle; and

(vi) The tensile or compressive stress generated by the bending moment resulting from a vertically up accelerative force equal to 0.7 times the vertical reaction, applied at each suspension assembly. The vertical reaction must be calculated based on the static weight of the lading, the weight of the cargo tank and other structures and equipment supported by the cargo tank wall.

(4) S_z = The following shear stresses that apply, in psi.:

(i) The vertical shear stress generated by a vertical force equal to 1.7 times the vertical reaction, applied at each suspension assembly. The vertical reaction must be calculated based on the static weight of the lading, the weight of the cargo tank and other structures and equipment supported by the cargo tank wall;

(ii) The lateral shear stress generated by a lateral accelerative force equal to 0.4 times the vertical reaction, applied laterally at the road surface. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank motor vehicle; and

(iii) The torsional shear stress generated by a lateral accelerative force equal to 0.4 times the vertical reaction, applied laterally at the road surface. The vertical reaction must be calculated based on the static weight of the fully loaded cargo tank motor vehicle.

* * *

(g) * * *

(2) A lightweight attachment to the cargo tank wall, such as a conduit clip, brakeline clip, skirting structure, lamp mounting bracket, or placard holder, must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. * * *

* * *

13. In § 178.345-7, the last sentence in paragraph (c) is amended by adding the wording "unless reinforced external to the tank" to the end of the sentence; paragraph (d) introductory text is amended by removing the words "it must" and adding, in their place, the words "reinforcement must"; and paragraph (a)(2) is revised to read as follows:

§ 178.345-7 Circumferential reinforcements.

(a) * * *

(2) Where circumferential joints are made between conical shell sections, or between conical and cylindrical shell

sections, and the angle between adjacent sections is less than 160 degrees, circumferential reinforcement must be located within one inch of the shall joint, unless otherwise reinforced with structural members capable of maintaining shell stress levels authorized in § 178.345-3. When the joint is formed by the large ends of adjacent conical shell sections, or by the large end of a conical shell and a cylindrical shell section, this angle is measured inside the shell; when the joint is formed by the small end of a conical shell section and a cylindrical shell section, it is measured outside the shell.

§ 178.345-8 [Amended]

14. In § 178.345-8, paragraph (d)(3) is amended by removing the second sentence and revising the third sentence to read as follows: "Such impact must be considered as being uniformly applied in a horizontal plane at an angle of 30 degrees or less to the longitudinal axis of the vehicle."

15. In § 178.345-9, paragraph (a) is revised to read as follows:

§ 178.345-9 Pumps, piping, hoses and connections.

(a) Suitable means must be provided during loading or unloading operations to ensure that pressure within a cargo tank does not exceed test pressure.

16. In § 178.345-10, paragraph (b)(3) is revised to read as follows:

§ 178.345-10 Pressure relief.

(b) * * *

(3) Each pressure relief system must be designed to withstand dynamic pressure surges in excess of the design set pressure as specified in paragraphs (b)(3) (i) and (ii) of this section. Set pressure is a function of MAWP as set forth in paragraph (d) of this section.

(i) After August 31, 1992, each pressure-actuated relief system must be able to withstand dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with a total volume of liquid released not exceeding one gallon before the relief system recloses to a leak-tight condition. This capacity must be demonstrated by testing. An acceptable test procedure is outlined in TTMA RP No. 81—"Performance of Spring-Loaded Pressure Relief Valves on MC 306, MC 307, and MC 312 Tanks," May 24, 1989 edition.

(ii) After August 31, 1995, each pressure relief system must be able to

withstand a dynamic pressure surge reaching 30 psig above the design set pressure and sustained above the set pressure for at least 60 milliseconds with no loss of lading. This requirement must be met regardless of vehicle orientation.

17. Section 178.345-11 is revised to read as follows:

§ 178.345-11 Tank outlets.

(a) *General.* As used in this section, "loading/unloading outlet" means any opening in the cargo tank wall used exclusively for loading or unloading of lading, as distinguished from outlets such as manhole covers, vents, vapor recovery devices, and similar closures. Tank outlets, closures and associated piping must be protected in accordance with § 178.345-8.

(b) Each tank loading/unloading outlet must be equipped with an internal self-closing stop-valve, or alternatively, with an external stop-valve located as close as practicable to the tank wall. Each tank loading/unloading outlet must be in accordance with the following provisions:

(1) Each loading/unloading outlet must be fitted with a self-closing system capable of closing all such outlets in an emergency within 30 seconds of actuation. During normal operations the outlets may be closed manually. The self-closing system must be designed according to the following:

(i) Each self-closing system must include a remotely actuated means of closure located more than 10 feet from the loading/unloading outlet where vehicle length allows, or on the end of the cargo tank farthest away from the loading/unloading outlet. The actuating mechanism must be corrosion-resistant and effective in all types of environment and weather.

(ii) If the actuating system is accidentally damaged or sheared off during transportation, each loading/unloading outlet must remain securely closed and capable of retaining lading.

(iii) When required by part 173 of this subchapter for materials which are flammable, pyrophoric, oxidizing, or Poison B liquids, the remote means of closure must be capable of thermal activation. The means by which the self-closing system is thermally activated must be located as close as practicable to the primary loading/unloading connection and must actuate the system at a temperature not over 250° F. In addition, outlets on these cargo tanks must be capable of being remotely closed manually or mechanically.

(2) Outlets used only for loading which discharge lading above the

maximum liquid level of the cargo tank need not be equipped with a self-closing system.

(c) Any loading/unloading outlet extending beyond an internal self-closing stop-valve, or beyond the innermost external stop-valve which is part of the self-closing system, must be fitted with another stop-valve at the end of such connection.

(d) Each tank outlet that is not a loading/unloading outlet must be equipped with a stop-valve or other leak-tight closure located as close as practicable to the tank outlet. Any connection extending beyond this closure must be fitted with another stop-valve or other leak-tight closure at the end of such connection.

§ 178.346-1 [Amended]

18. In § 178.346-1(d)(8), the end of the sentence is amended by removing the wording "and UW-13.1(f)" and adding, in its place, the wording "UW-13(b)(2), UW-13.1(f) and the dimensional requirements found in Figure UW-13.1".

19. In § 178.347-1(d)(8), the end of the sentence is amended by removing the wording "and UW-13.1(f)" and adding, in its place, the wording "UW-13(b)(2), UW-13.1(f), and the dimensional requirements found in Figure UW-13.1".

§ 178.348-1 [Amended]

20. Section 178.348-1(e)(2)(viii) is amended by removing the wording "and UW-13.1(f)" and adding, in its place, the wording "UW-13(b)(2), UW-13.1(f), and the dimensional requirements found in Figure UW-13.1".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

21. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR Part 1.

22. In § 180.2, paragraph (b)(2) is revised to read as follows:

§ 180.2 Applicability.

(b) * * *

(2) Reintroduces into commerce a packaging that bears markings indicating compliance with this part.

§ 180.405 [Amended]

23. In § 180.405, the following changes are made:

a. The first sentence in paragraph (g)(3) is amended by revising the year "1990" to read "1991".

b. In paragraph (h), the introductory text is amended by removing the letters "DOT" appearing in the second

sentence and revising the last sentence, to read as follows: "The following requirements apply:"

c. Paragraph (h)(1) is amended by removing the last sentence, which reads "This requirement applies to DOT 406, DOT 407 and DOT 412 cargo tank motor vehicles and to all DOT MC-specification cargo tanks except MC 330, MC 331 and MC 338; and".

24. In addition in § 180.405, the last sentence in paragraph (b), paragraphs (c)(1) introductory text, (c)(2)(vii), (g)(1), (g)(2), and the first sentence in paragraph (h)(2) are revised to read as follows:

§ 180.405 Qualification of cargo tanks.

(b) * * * However, no cargo tank may be marked or certified after August 31, 1993, to the applicable MC 306, MC 307, MC 312, MC 331 or MC 338 specification in effect on December 30, 1990.

(c) * * * (1) A cargo tank made to a specification listed in Column 1 may be used when authorized in this part, provided the cargo tank was marked or certified before the date listed in Column 2:

(vii) A Specification MC 330 cargo tank, to conform with a Specification MC 331 cargo tank, except as specifically required by § 178.315 of this subchapter (see §§ 178.337-8 and 178.337-9 of this subchapter).

(g) * * * (1) MC 306, MC 307, and MC 312 cargo tanks marked or certified after December 30, 1990, and DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles must be equipped with manhole assemblies conforming with § 178.345-5 of this subchapter.

(2) On or before August 31, 1995, each owner of a cargo tank marked or certified before December 31, 1990, authorized for the transportation of a hazardous material, must have the cargo tank equipped with manhole assemblies conforming with § 178.345-5, except for the dimensional requirements in § 178.345-5(a), the hydrostatic testing requirements in § 178.354-5(b), and the marking requirements in § 178.345-5(e) of this subchapter. A manhole assembly meeting one of the following provisions is considered to be in compliance with this paragraph:

(i) Manhole assemblies on MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, MC 310, MC 311 and MC 312 cargo tanks which are marked or certified in writing as conforming to § 178.345-5 of this subchapter or TTMA RP No. 61, or are tested and certified in accordance with TTMA TB No. 107.

(ii) Manhole assemblies on MC 304 and MC 307 cargo tanks.

(iii) Manhole assemblies on MC 310, MC 311, and MC 312 cargo tanks with a test pressure of 36 psig or greater.

(h) * * * (2) After August 31, 1995, replacements for any reclosing pressure relief valve must withstand pressure surges with no loss of lading regardless of vehicle orientation. * * *

§ 180.407 [Amended]

25. In 180.407, paragraph (a)(2) is amended by adding the phrase "or during loading or unloading" immediately after the word "test"; the first sentence in paragraph (g)(1)(v) is amended by revising the year "1990" to read "1991"; the first sentence in paragraph (d)(1) introductory text, and paragraphs (f)(1), (f)(2), the heading of paragraph (g), the table in paragraph (g)(1)(iv), and paragraph (h)(1) are revised; and introductory text is added to paragraph (g) to read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

(d) * * * (1) Where insulation precludes external visual inspection, the cargo tank, other than an MC 330 or MC 331 cargo tank, must be given a visual internal inspection in accordance with § 180.407(e). * * *

(f) * * * (1) Rubber (elastomeric) lining must be tested for holes as follows:

(i) Equipment must consist of:

(A) A high frequency spark tester capable of producing sufficient voltage to ensure proper calibration;

(B) A probe with an "L" shaped 2.4 mm (0.09 inch) diameter wire with up to a 30.5 cm (12-inch) bottom leg (end bent to a 12.7 mm (0.5 inch) radius), or equally sensitive probe; and

(C) A steel calibration coupon 30.5 cm × 30.5 cm (12 inches × 12 inches) covered with the same material and thickness as that to be tested. The material on the coupon shall have a test hole to the metal substrate made by puncturing the material with a 22 gauge hypodermic needle or comparable piercing tool.

(ii) The probe must be passed over the surface of the calibration coupon in a constant uninterrupted manner until the hole is found. The hole is detected by the white or light blue spark formed. (A sound lining causes a dark blue or purple spark.) The voltage must be adjusted to the lowest setting that will produce a minimum 12.7 mm (0.5 inch)

spark measured from the top of the lining to the probe. To assure that the setting on the probe has not changed, the spark tester must be calibrated periodically using the test calibration coupon, and the same power source, probe, and cable length.

(iii) After calibration, the probe must be passed over the lining in an uninterrupted stroke.

(iv) Holes that are found must be repaired using equipment and procedures prescribed by the lining manufacturer or lining installer.

(2) Linings made of other than rubber (elastomeric material) must be tested using equipment and procedures prescribed by the lining manufacturer or lining installer.

(g) *Pressure test.* All components of the cargo tank wall, as defined in § 178.320(a) of this subchapter, must be pressure tested as prescribed by this paragraph.

(1) * * *

(iv) * * *

Specification	Test pressure
MC 300, 301, 302, 303, 305, 306.	20.7 kPa (3 psig) or design pressure, whichever is greater.
MC 304, 307...	275.8 kPa (40 psig) or 1.5 times the design pressure, whichever is greater.
MC 310, 311, 312.	20.7 kPa (3 psig) or 1.5 times the design pressure, whichever is greater.
MC 330, 331...	1.5 times either the MAWP or the re-rated pressure, whichever is applicable.
MC 338.....	1.25 times either the MAWP or the re-rated pressure, whichever is applicable.
DOT 406.....	34.5 kPa (5 psig) or 1.5 times the MAWP, whichever is greater.
DOT 407.....	275.8 kPa (40 psig) or 1.5 times the MAWP, whichever is greater.
DOT 412.....	1.5 times the MAWP.

(h) * * * (1) Each cargo tank must be tested for leaks in accordance with § 180.407(c). The leakage test must include product piping with all valves and accessories in place and operative, except that any venting devices set to discharge at less than the leakage test pressure must be removed or rendered inoperative during the test. Test pressure must be maintained at least 5 minutes. Suitable safeguards must be provided to protect personnel should a failure occur. MC 330 and MC 331 cargo tanks may be leak tested with the hazardous materials contained in the tank during the test. Leakage test pressure must be not less than 80 percent of the tank design pressure or

MAWP, whichever is marked on the certification or specification plate, except as follows:

(i) A cargo tank with an MAWP of 690 kPa (100 psig) or more may be leak tested at its maximum normal operating pressure provided it is in dedicated service or services; or

(ii) An MC 330 or MC 331 cargo tank in dedicated liquified petroleum gas service may be leak tested at not less than 414 kPa (60 psig).

* * *

§ 180.413 [Amended]

26. In § 180.413, the third sentence in paragraph (c) is amended by removing the word "hydrostatically" appearing after the word "be" and before the word "pressure"; paragraph (d)(2)(iii) is amended by revising the word "regulations" to read "Regulations", and paragraphs (d)(1)(i) through (iii), and (d)(3) are revised to read as follows:

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

* * *

(d) * * *

(1) * * *

(i) For Specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks in accordance with Specifications MC 306 or DOT 406 until August 31, 1993, and after this date, to Specification DOT 406.

(ii) For Specification MC 304 and MC 307 cargo tanks in accordance with Specification MC 307 or DOT 407 until August 31, 1993, and after this date, to Specification DOT 407.

(iii) For Specification MC 310, MC 311, and MC 312 cargo tanks in accordance with Specification MC 312 or DOT 412 until August 31, 1993, and after this date, to Specification DOT 412.

* * *

(3) If the stretching or rebarrelling changes the original approved design, the rebarrelled or stretched cargo tank must be recertified by Design Certifying Engineer. Recertification of a cargo tank also applies if a change to the undercarriage (stretching) affects the structural integrity of the cargo tank, even though no welding is performed on the cargo tank wall. The person performing the stretching or rebarrelling and a Registered Inspector must certify that the stretched or rebarrelled cargo tank has been constructed and tested in accordance with the applicable specification by issuing a supplemental manufacturer's certificate. The registration number of the Registered Inspector and, if applicable, the Design Certifying Engineer must be entered on the certificate.

26a. Section 180.415 is revised to read as follows:

§ 180.415 Test and inspection markings.

(a) Each cargo tank successfully completing the test and inspection requirements contained in § 180.407 must be marked as specified in this section.

(b) Each cargo tank must be durably and legibly marked, in English, with the test date (month and year) followed by the type of test or inspection. The marking must be in letter and numbers at least 32 mm (1.25 inches) high, on the

tank shell near the specification plate, or anywhere on the front head. The type of test or inspection may be abbreviated as follows: V for external visual inspection and test; I for internal visual inspection; P for pressure retest; L for lining test, K for leakage test; and T for thickness test. For example, the marking "10-85 P, V, L" would indicate that in October 1985 the cargo tank received and passed the prescribed pressure retest, external visual inspection and test, and the lining inspection.

(c) For a cargo tank motor vehicle composed of multiple cargo tanks constructed to the same specification, which are tested and inspected at the same time, one set of test and inspection markings may be used to satisfy the requirements of this section. For a cargo tank motor vehicle composed of multiple cargo tanks constructed to different specifications, which are tested and inspected at different intervals, the test and inspection markings must appear in the order of the cargo tank's corresponding location, from front to rear.

27. In § 180.417(a)(2), in the first sentence and at the beginning of the second sentence, the wording "motor vehicle" is added immediately after the wording "cargo tank".

Issued in Washington DC, on June 4, 1991, under the authority delegated in 49 CFR Part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 91-13595 Filed 6-17-91; 8:45 am]

BILLING CODE 4910-60-M

Register

Monday
June 17. 1991

Part V

Office of Management and Budget

**Cumulative Report on Rescissions and
Deferrals; Notice**

OFFICE OF MANAGEMENT AND BUDGET**Cumulative Report on Rescissions and Deferrals**

June 1, 1991.

This report is submitted in fulfillment of the requirement of section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344). Section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of June 1, 1991, of 27 rescission proposals and ten deferrals contained in four special messages for FY 1991. These messages were transmitted to Congress on October 4, 1990, January 9, 1991, February 28, 1991, and April 16, 1991.

Rescissions (Table A and Attachment A)

As of June 1, 1991, there are no funds being withheld related to rescission proposals. However, a rescission proposal for \$2.4 million is pending before the Congress.

Deferrals (Table B and Attachment B)

As of June 1, 1991, \$4,784.4 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1991.

Information From Special Messages

The special messages containing information on rescissions and deferrals that are covered by this cumulative report are printed in the *Federal Register* cited below:

55 FR 41436, Thursday, October 11, 1990,
56 FR 1704, Wednesday, January 16, 1991,
56 FR 10082, Friday, March 8, 1991,
56 FR 18644, Tuesday, April 23, 1991.

Richard Darman,
Director.

TABLE A—STATUS OF FY 1991 RESCISSIONS

	Amounts (in millions of dollars)
Rescissions proposed by the President	4,312.9
Rejected by the Congress	4,309.9
Funding never withheld	0
Pending before the Congress	2.4

TABLE B—STATUS OF FY 1991 DEFERRALS

	Amounts (in millions of dollars)
Deferrals proposed by the President	9,342.6
Routine Executive releases through June 1, 1991 (OMB/Agency releases of \$4,558.9 million, partly offset by cumulative positive adjustment of \$0.7 million)	-4,558.2
Overtaken by the Congress	0
Currently before the Congress	4,784.4

Attachments.

ATTACHMENT A—STATUS OF FY 1991 RESCISSIONS

[Amounts in thousands of dollars]

As of June 1, 1991, agency/bureau/account	Rescission No.	Amount		Date of message	Amount rescinded	Amount made available	Date made available	Congressional action
		Previously considered by Congress	Currently before Congress					
Department of Agriculture								
Soil Conservation Service:								
Watershed and flood prevention operations.	R91-1	10,000		02-28-91		10,000	05-07-91	
Department of Defense								
Procurement:								
Procurement of weapons and tracked combat vehicles, Army.	R91-2	86,000		02-28-91		36,000	05-13-91	
Procurement of ammunition, Army	R91-3	13,000		02-28-91		13,000	05-13-91	
Aircraft procurement, Navy	R91-4	1,093,500		02-28-91		1,093,500	05-13-91	
Weapons procurement, Navy	R91-5	2,600		02-28-91		2,600	05-13-91	
Shipbuilding and conversion, Navy	R91-6	405,000		02-28-91		405,000	05-13-91	
Other procurement, Navy	R91-7	10,000		02-28-91		10,000	05-13-91	
Procurement, Marine Corps	R91-8	2,000		02-28-91		2,000	05-13-91	
Aircraft procurement, Air Force	R91-9	14,200		02-28-91		14,200	05-13-91	
Missile procurement, Air Force	R91-10	74,700		02-28-91		74,700	05-13-91	
Other procurement, Air Force	R91-11	254,200		02-28-91		254,200	05-13-91	
Procurement, Defense Agencies	R91-12	65,303		02-28-91		65,303	05-13-91	
National guard and reserve equipment	R91-13	289,900		02-28-91		289,900	05-13-91	
Research, Development, Test, and Evaluation:								
Research, development, test, and evaluation, Army.	R91-14	60,800		02-28-91		60,800	05-13-91	
Research, development, test, and evaluation, Navy.	R91-15	834,500		02-28-91		834,500	05-13-91	
Research, development, test, and evaluation, Air Force.	R91-16	134,100		02-28-91		134,100	05-13-91	
Research, development, test, and evaluation, Defense Agencies.	R91-17	29,300		02-28-91		29,300	05-13-91	
Military Construction:								
Military construction, Navy	R91-18	48,962		02-28-91		48,962	05-13-91	
Military construction, Air Force	R91-19	91,800		02-28-91		91,800	05-13-91	

ATTACHMENT A—STATUS OF FY 1991 RESCISSIONS—Continued

[Amounts in thousands of dollars]

As of June 1, 1991, agency/bureau/account	Rescission No.	Amount		Date of message	Amount rescinded	Amount made available	Date made available	Congressional action
		Previously considered by Congress	Currently before Congress					
Department of Health and Human Services								
Family Support Administration Interim assistance to States for legalization.	R91-27	2,400		04-16-91		2,400	05-13-91	
Department of Housing and Urban Development								
Housing Programs:								
Annual contributions for assisted housing	R91-20	500,000		02-28-91		500,000	04-08-91	
Congregate services program	R91-21	9,500		02-28-91		9,500	04-09-91	
Nehemiah housing opportunity fund	R91-22	39,112		02-28-91		39,112	04-09-91	
Community Planning and Development:								
Urban development action grants	R91-23	13,518		02-28-91		13,518	04-09-91	
Rental rehabilitation grants	R91-24	70,000		02-28-91		70,000	04-09-91	
Urban homesteading	R91-25	13,397		02-28-91		13,397	04-09-91	
Rehabilitation loan fund	R91-26	144,459		02-28-91		144,459	04-09-91	
Total, Rescissions Proposed		4,309,851	2,400			4,312,251		

ATTACHMENT B—STATUS OF FY 1991 DEFERRALS—AS OF JUNE 1, 1991

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts Transmitted		Date of message	Releases (—)		Congressional action	Cumulative adjustments (+)	Amount deferred as of 6-1-91
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Funds Appropriated to the President									
International Security Assistance:									
Economic support fund	D91-1	149,319		10-04-90					
	D91-1A		1,943,510	01-09-91					
	D91-1B		830	02-28-91	1,314,856				778,803
Foreign military financing	D91-8	4,820,649		01-09-91	3,210,773				1,609,876
Peacekeeping operations	D91-9	5,177		01-09-91	5,177				0
Department of Agriculture									
Forest Service:									
Expenses, brush disposal	D91-2	135,955		10-04-90					135,955
Cooperative work	D91-3	273,468		10-04-90					
	D91-3A		235,572	01-09-91					509,040
Timber salvage sales	D91-10	103,684		02-28-91					103,684
Department of Defense—Civil									
Wildlife Conservation, Military Reservations:									
Wildlife conservation, Defense.	D91-4	1,186		10-04-91					1,186
Department of Health and Human Services									
Social Security Administration:									
Limitation on administrative expenses (construction).	D91-5	7,127		10-04-90					7,127
Department of State									
Bureau of Refugee Programs:									
United States emergency refugee and migration assistance fund, executive.	D91-6	14,529		10-04-90					
	D91-6A		44,507	01-09-91	28,098			665	31,603
Department of Transportation									
Federal Aviation Administration:									
Facilities and equipment (Airport and airway trust fund).	D91-7	538,659		10-04-90					
	D91-7A		1,068,473	01-09-91					1,607,132
Total, deferrals		6,049,754	3,292,892		4,558,904			665	4,784,407

[FR Doc. 91-14407 Filed 6-14-91; 8:45 am]

BILLING CODE 3110-01-M

ATTACHMENT A - SUMMARY OF FY 1994 ACTIVITY

(Amounts in thousands of dollars)

Activity	Actual	Budget	Variance
Administrative	1,200	1,100	100
Programs	15,000	14,500	500
Capital	2,500	2,400	100
Other	500	500	0
Total	20,200	19,500	700

ATTACHMENT B - SUMMARY OF FY 1994 ACTIVITY

(Amounts in thousands of dollars)

Activity	Actual	Budget	Variance
Administrative	1,200	1,100	100
Programs	15,000	14,500	500
Capital	2,500	2,400	100
Other	500	500	0
Total	20,200	19,500	700

federal register

**Monday
June 17, 1991**

Part VI

The President

**Proclamation 6306—Baltic Freedom Day,
1991 and 1992**

Monday
June 17, 1991

Part VI

The President

Proclamation 6306—Battle of Freedom Day,
1991 and 1992

Presidential Documents

Title 3—

Proclamation 6306 of June 13, 1991

The President

Baltic Freedom Day, 1991 and 1992

By the President of the United States of America

A Proclamation

During the past year, the long struggle of the Baltic peoples to recover their freedom has been marked by both triumph and tragedy: triumph in their bold calls for liberty and independence; tragedy in the bloody events of January 1991.

The United States and, indeed, all freedom-loving nations have long denounced the infamous Molotov-Ribbentrop pact that led to the forcible incorporation of the independent Baltic States into the Soviet Union. The peoples of both the West and the Baltic States have continued to believe that the freedom of Lithuania, Latvia, and Estonia must and can be restored. Recent events suggest that our hopes have not been misplaced.

In peaceful, democratic referendums, the peoples of Estonia, Latvia, and Lithuania have asserted overwhelmingly their desire for freedom. Toward that aim, they have sought to enter into meaningful negotiations with Moscow about their status. Despite the tragic events of January 1991, which resulted in the deaths of at least 21 Lithuanians and Latvians and many more injured, a dialogue between the Baltic governments and the Soviet Union has begun. We hope that it will bear fruit, and we urge the Soviet Union to move forward with the talks.

However, the United States remains deeply concerned over the continued application of intimidation and force by Soviet authorities. Such actions are incompatible with the process of peaceful change through fair and constructive negotiations.

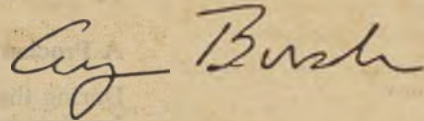
The United States has never and will never recognize the forcible annexation of the Baltic States by the Soviet Union. I reiterated this policy during my recent meeting with Lithuanian President Landsbergis, Estonian Prime Minister Savisaar, and Latvian Prime Minister Godmanis. This was my sixth meeting with the Baltic leadership during the past 12 months. The Administration will remain in close contact with the Baltic leadership in the months ahead.

As we commemorate "Baltic Freedom Day," we reaffirm our support for the right of the Baltic peoples to live in peace and freedom.

The Congress, by Public Law 102-17, has designated June 14, 1991, and June 14, 1992, as "Baltic Freedom Day" and has authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the days of June 14, 1991, and June 14, 1992, as Baltic Freedom Day. I call upon the people of the United States to observe these days with appropriate ceremonies and activities to reaffirm their commitment to human rights and to freedom and democracy for all oppressed peoples.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of June, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 91-14565

Filed 6-14-91; 10:39 am]

Billing code 3195-01-M

Editorial note: For the President's remarks of June 13 on signing Baltic Freedom Day, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 24).

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 14, 1991

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	\$12.00	Jan. 1, 1991
3 (1990 Compilation and Parts 100 and 101)	14.00	Jan. 1, 1991
4	15.00	Jan. 1, 1991
5 Parts:		
1-699.....	17.00	Jan. 1, 1991
700-1199.....	13.00	Jan. 1, 1991
1200-End, 6 (6 Reserved).....	18.00	Jan. 1, 1991
7 Parts:		
0-26.....	15.00	Jan. 1, 1991
27-45.....	12.00	Jan. 1, 1991
46-51.....	17.00	Jan. 1, 1991
52.....	24.00	Jan. 1, 1991
53-209.....	18.00	Jan. 1, 1991
210-299.....	24.00	Jan. 1, 1991
300-399.....	12.00	Jan. 1, 1991
400-699.....	20.00	Jan. 1, 1991
700-899.....	19.00	Jan. 1, 1991
900-999.....	28.00	Jan. 1, 1991
1000-1059.....	17.00	Jan. 1, 1991
1060-1119.....	12.00	Jan. 1, 1991
1120-1199.....	10.00	Jan. 1, 1991
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1500-1899.....	12.00	Jan. 1, 1991
1900-1939.....	11.00	Jan. 1, 1991
1940-1949.....	22.00	Jan. 1, 1991
1950-1999.....	25.00	Jan. 1, 1991
2000-End.....	10.00	Jan. 1, 1991
8	14.00	Jan. 1, 1991
9 Parts:		
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200-End.....	18.00	Jan. 1, 1991
10 Parts:		
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200-399.....	13.00	Jan. 1, 1987
400-499.....	20.00	Jan. 1, 1991
500-End.....	27.00	Jan. 1, 1991
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200-219.....	12.00	Jan. 1, 1991
220-299.....	21.00	Jan. 1, 1991
300-499.....	17.00	Jan. 1, 1991
500-599.....	17.00	Jan. 1, 1991
600-End.....	19.00	Jan. 1, 1991
13	24.00	Jan. 1, 1991
14 Parts:		
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60-139.....	21.00	Jan. 1, 1991
140-199.....	10.00	Jan. 1, 1991
200-1199.....	20.00	Jan. 1, 1991

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1200-End.....	13.00	Jan. 1, 1991
15 Parts:		
0-299.....	12.00	Jan. 1, 1991
300-799.....	22.00	Jan. 1, 1991
800-End.....	15.00	Jan. 1, 1991
16 Parts:		
0-149.....	5.50	Jan. 1, 1991
150-999.....	14.00	Jan. 1, 1991
1000-End.....	19.00	Jan. 1, 1991
17 Parts:		
1-199.....	15.00	Apr. 1, 1990
200-239.....	16.00	Apr. 1, 1990
240-End.....	23.00	Apr. 1, 1990
18 Parts:		
1-149.....	15.00	Apr. 1, 1991
150-279.....	16.00	Apr. 1, 1990
280-399.....	14.00	Apr. 1, 1990
400-End.....	9.50	Apr. 1, 1990
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200-End.....	9.50	Apr. 1, 1990
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600-799.....	8.00	Apr. 1, 1990
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1300-End.....	9.00	Apr. 1, 1990
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*500-699.....	13.00	Apr. 1, 1991
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1700-End.....	13.00	Apr. 1, 1990
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§§ 1.61-1.169.....	28.00	Apr. 1, 1990
§§ 1.170-1.300.....	18.00	Apr. 1, 1990
§§ 1.301-1.400.....	17.00	Apr. 1, 1990
§§ 1.401-1.500.....	29.00	Apr. 1, 1990
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600-End.....	6.50	Apr. 1, 1990
27 Parts:		
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200-End.....	14.00	Apr. 1, 1990
28	28.00	July 1, 1990

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0-99	18.00	July 1, 1990	1-100	8.50	July 1, 1990
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500-899	26.00	July 1, 1990	102-200	11.00	July 1, 1990
900-1899	12.00	July 1, 1990	201-End	13.00	July 1, 1990
1900-1910 (§§ 1901.1 to 1910.999)	24.00	July 1, 1990	42 Parts:		
1910 (§§ 1910.1000 to end)	14.00	July 1, 1990	1-60	16.00	Oct. 1, 1990
1911-1925	9.00	⁶ July 1, 1989	61-399	5.50	Oct. 1, 1990
1926	12.00	July 1, 1990	400-429	21.00	Oct. 1, 1990
1927-End	25.00	July 1, 1990	430-End	25.00	Oct. 1, 1990
30 Parts:			43 Parts:		
0-199	22.00	July 1, 1990	1-999	19.00	Oct. 1, 1990
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31 Parts:			44	23.00	Oct. 1, 1990
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32 Parts:			200-499	12.00	Oct. 1, 1990
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1-189	24.00	July 1, 1990	1-40	14.00	Oct. 1, 1990
190-399	28.00	July 1, 1990	41-69	14.00	Oct. 1, 1990
400-629	24.00	July 1, 1990	70-89	8.00	Oct. 1, 1990
630-699	13.00	⁵ July 1, 1989	90-139	12.00	Oct. 1, 1990
700-799	17.00	July 1, 1990	140-155	13.00	Oct. 1, 1990
800-End	19.00	July 1, 1990	156-165	14.00	Oct. 1, 1990
33 Parts:			166-199	14.00	Oct. 1, 1990
1-124	16.00	July 1, 1990	200-499	20.00	Oct. 1, 1990
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200-End	20.00	July 1, 1990	47 Parts:		
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0-17	24.00	July 1, 1990	3-6	19.00	Oct. 1, 1990
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39	14.00	July 1, 1990	15-End	29.00	Oct. 1, 1990
40 Parts:			49 Parts:		
1-51	27.00	July 1, 1990	1-99	14.00	Oct. 1, 1990
52	28.00	July 1, 1990	100-177	27.00	Oct. 1, 1990
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61-80	13.00	July 1, 1990	200-399	21.00	Oct. 1, 1990
81-85	11.00	July 1, 1990	400-999	26.00	Oct. 1, 1990
86-99	26.00	July 1, 1990	1000-1199	17.00	Oct. 1, 1990
100-149	27.00	July 1, 1990	1200-End	19.00	Oct. 1, 1990
150-189	23.00	July 1, 1990	50 Parts:		
190-259	13.00	July 1, 1990	1-199	20.00	Oct. 1, 1990
260-299	22.00	July 1, 1990	200-599	16.00	Oct. 1, 1990
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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1990. The CFR volume issued January 1, 1987, should be retained.

³ No amendments to this volume were promulgated during the period Apr. 1, 1989 to Mar. 31, 1990. The CFR volume issued April 1, 1989, should be retained.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

⁵ No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1990. The CFR volume issued July 1, 1989, should be retained.

⁶ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁷ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



